
I Do Appoint *Benjamin Tooke* to Print the
T R Y A L of *John Hambden*, Esquire; and
Order, That no other Person presume to
Print the same.

G E O. J E F F R E R S.

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Pro: Printing
THE
TRYAL
AND
CONVICTION
OF
John Hambden, Esq;
UPON AN
INDICTMENT
OF

High-Misdemeanour,

For Contriving and Practising to disturb the
Peace of our Sovereign Lord the

K I N G,

And Stirring up SEDITION in this Kingdom.

Before the Right Honourable

Sir George Jeffreys,

KNIGHT and BARONET,

Lord Chief Justice of His Majesties Court of KING S-BENCH; and the
rest of the Reverend JUDGES of that Court, holden at *West-*
minster, the 6th day of *February*, 1683.

L O N D O N, Printed for *Benjamin Tooke* at the Ship in St.
Paul's Church-Yard, 1684.

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THE
TRIAL
OF
John Hambden, Esq; .

The 28th day of November, 1683. Ann. 35. Car. 2. Reg. John Hambden Esq; being brought up by Writ of Habeas Corpus, from the Tower of London, and there being an Indictment preferred against him for Misdemeanor, His Majesties Attorney General, prayed that he might be Arraigned upon it, which was done in this manner.

Cl. of Cr. **J**ohn Hambden, You stand here Indicted by the Name of John Hambden, late of the Parish of St. Giles in the Fields, in the County of Middlesex, Gent. For that you being a Pernicious and Seditious Man and a Person of a Wicked mind, and of an impious, unquiet, and turbulent Disposition, and contriving, practising, and falsely, unlawfully, unjustly, maliciously, turbulently, and seditiously intending the Peace of our Sovereign Lord King Charles that now is, and the common Tranquility of this Kingdom of England, to disquiet, molest, and disturb, and as much as in you lay, Sedition within this Kingdom of England, to incite, stir up, and procure, and the Government of our said Lord the King in this Kingdom of England into danger to bring, And that you the said John Hambden, your most Impious, Wicked, and Seditious Intentions aforesaid, to fulfil and perfect, and bring to effect the last day of June, in the Five and Thirtieth year of the Reign of our said Sovereign Lord the King that now is; and divers other days and times as well before as after, with Force and Arms, &c. At the Parish of St. Giles in the Fields, in the County of Middlesex, unlawfully, unjustly, maliciously, and seditiously did assemble your self, meet, consult, conspire, and confederate with divers evil disposed Subjects of our said Lord the King to the Jurors unknown, and with the said Persons did treat concerning your said most Wicked and Seditious Compassings, Imaginations, and Purposes aforesaid, to be executed, fulfilled, and brought to effect, and further that you the said John Hambden, your most Wicked, Impious, and Seditious Contrivances, Practices and Intentions aforesaid, to fulfil, perfect, and reduce to effect, then, and there, viz. the last day of June in the 35th. year aforesaid, and divers other days and times, as well before as after, at the Parish aforesaid, in the County aforesaid, with Force and Arms, &c. falsely, unlawfully, unjustly, maliciously, and seditiously did consult, consent, conspire and confederate of an Insurrection within this Kingdom of England to be made, and of procuring and providing Arms and Armed Men to be prepared in divers places within this Kingdom of England your same most Wicked, Impious, and Seditious Intentions and Compassings aforesaid, to fulfil and perfect: And that you the said John Hambden, your most Wicked, Impious, and Seditious Intentions aforesaid, to fulfil and perfect, and bring to effect afterwards, viz. the last day of June, in the 35th year aforesaid, at the Parish aforesaid, in the County aforesaid, with Force and Arms, &c. falsely, unlawfully, unjustly, wickedly, maliciously, and seditiously did consult, agree, and consent that a certain Person to the Jurors aforesaid unknown, should be sent into Scotland to invite and incite divers evil disposed Subjects of our said Lord the King, of his Kingdom of Scotland, to come into this Kingdom of England to advise and consult with you the said John Hambden, and others the aforesaid evil disposed Subjects of our said Lord the King in this Kingdom of England, concerning Aid and Assistance to be expected and supplied out of the said Kingdom of
BScotland,

The Tryal of John Hambden, Esquire.

Scotland, your said most Wicked, Impious, and Seditious Intentions and Compassings aforesaid, to fulfil, effect, and promote in manifest contempt of the Laws of this Kingdom of England, to the evil and most pernicious Example of all others in the like case offending, and against the Peace of our said Sovereign Lord the King, his Crown and Dignity.

How sayst thou, art thou Guilty of this High Misdemeanour whereof thou standest Indicted, and hast been now Arraigned, or not Guilty?

Mr. Hambden. Not Guilty.

Upon which Plea Issue was joyned between His Majesties Attorney General, on behalf of the King and Defendant, and Bail was then taken for the Defendants appearance the next Term.

Hillary Term 35, and 36. Car. Secundi Reg. In the beginning of the Term, Sir Thomas Jenner, Knight, His Majesties Serjeant at Law, and Recorder of the City of London, Moved for a Tryal at the Bar, in the Case between the King and Mr. Hambden, which was by the Court appointed to be on Wednesday the 6th of February in the same Term.

Die Mercurii 6. Februarii, 1633. Anno Regni Reg. Car. Secundi. 36.

Cl. of Cr. Call the Defendant John Hambden. Mr. Williams. He appears.

Cl. of Cr. Gardez votrez Challenges. Call Sir Charles Gerard.

Cryer. You shall well and truly try the Issue between our Sovereign Lord the King, and John Hambden, Gent. and a true Verdict give according to your Evidence, So help you God. Jurat. Sir Charles Gerard.

Cl. of Cr. Roger Jennings, Esq; Jur. Henry Hodges, Esq; Jur. Joshua Galliard, Esq; Mr. Williams. We challenge him for the Defendant.

L. Ch. Just. What is your Cause of Challenge?

Mr. Williams. If your Lordship please to let him go through the Pannel, we will shew cause if there be not enough left without him.

L. Ch. Just. No, shew your Cause now, it being against the King.

Mr. Williams. He has an Employment under the King, He has an Office in the Forest, and that we say is our Cause of Challenge.

L. Ch. Just. What then if he have?

Mr. Williams. My Lord, We suppose then he is not an indifferent Person to try this Cause.

L. Ch. Just. Ay, let me hear that now proved and defended by any Gentleman of the long Robe, that that is a good cause of Challenge. Shew me what Law there is for it.

Mr. Williams. To be of the Kings Robe, or Pay, or Sallery, is an exception in any Case wherein the King is concerned.

L. Ch. Just. Shew me any Law for that if you can, Mr. Williams, I know you are a Lawyer.

Mr. Wallop. It is the Opinion of my Lord Coke in his *Institutes*, that it is a good Cause of Challenge.

L. Ch. Just. But there is the Opinion of all the Judges in Henry the Fourths time against it.

Mr. Wallop. It is my Lord, fol. 156.

L. Ch. Just. But I can cite you three or four Books, and you have them all together in *Rolls Abridgment*, *Title Challenge*, where he sets down four Books one after another, That it is no cause of Challenge, even to be the Kings Tenant, and there is a great deal of reason for it. For if that were a good Cause of Challenge, mark the Consequence, then all Persons that hold Lands in England hold them mediately or immediately of the King, and so the King could have no Free-holders to be Jury-Men in his Cause.

Mr. Williams. This is a more special Cause of Challenge than that.

L. Ch. Just. What can be greater than that of being the Kings Tenant?

Mr. Att. Gen. Especially when all the Land of England was held of the Crown, as originally it was.

Mr.

Mr. *Trewer*. My Lord in 2d. *Rolls* 646. *Tit. Tryals*, There is the expresse Opinion of my Lord *Rolls*, That to be of the Livery or a menial Servant of the Crown, is a good Cause of Challenge.

L. Ch. Just. And look you but in the 1st Case in the 1st Part of the Abridgment, Title *Challenges*, where he mentions 3 or 4 Books to the same purpose, and 'tis quite otherwise.

Mr. *Williams*. My Lord, In that of 1st. *Rolls*, he only cites some Books, but the other is his own Opinion.

L. Ch. Just. Well, make out your Fact if you have a mind to it; but it is well known that neither Mr. Serjeant *Rolls*, nor my Lord *Coke*, when he delivered that Opinion, are to be reckoned such Authorities in Crown matters.

Mr. *Williams*. We will ask him, my Lord, if you please, I suppose he will not deny it.

L. Ch. Just. Now make out your Fact if you will have any benefit by it, 'tis only a Challenge to the favour, which ought not to be in the Kings Case. I am very glad that we are now to debate this matter with Men of the Robe, because we have had a strange sort of Notions and Reflections spread abroad of late, as tho' the Judges now adays gave strange sort of Opinions, and as tho' Persons that had been blemishes at the Bar, were preferred to do strange things when they come upon the Bench; but truly I wonder to hear that it should be a doubt, when at the same time that which we gave as our Opinion about one particular Challenge, that is as to Free-holders, it was the Judgment of all the Judges, That that was no Challenge, and all the Counsel that were concerned in that Case, know it was the Opinion of all the Judges. But now if we meet with Lawyers, I shall be glad to have the matter fairly argued and debated, and pray shew me what Law or Reason is for it.

Mr. *Wallop*. Certainly my Lord, there is a great difference betwixt the general Allegiance of all Men, and so of a general tenure, and the dependance of any particular Person who is a menial Servant, and receives Wages of the King.

L. Ch. Just. I would desire to know of you Mr. *Wallop*, which is the greater Challenge, to say such a one is Tenant, or such a one is immediate Servant to J.S?

Mr. *Wallop*. There is a great difference, my Lord, I think, between an immediate Tenant, and the general tenure of all Subjects.

L. Ch. Just. But certainly the Law is thus, if he were an immediate or a mediate Tenant to any but the King, if his Lord were party to the Suit it would be a good Challenge, but the being Tenant to the King is no good Challenge in the Kings Case.

Mr. *Williams*. My Lord, I take it, the Act of Parliament that takes away the Court of Wards and Liveries, hath altered the Law as to that matter of Tenure; for now we hold in Socage, and that other Tenure is destroyed that was between the King and his Subjects.

L. Ch. Just. But pray how comes it to be a Challenge now that was not one before? Does that Act of Parliament make it a good cause of Challenge? If it does, shew it. I tell you the Old Books are against it.

Mr. *Williams*. I speak, my Lord, to the Tenure, That that is nothing at all now to be objected, because all is now in Socage.

L. Ch. Just. I would not have Mr. *Attorney* insist upon a Jury-man, but yet with-all I would not have it gone away with as Law, that it is a good Cause of Challenge.

Mr. *Wallop*. My Lord, We finding in some Cases that are in our Books, that it is held to be a good Cause of Challenge, lay it before the Court.

Mr. *Att. Gen.* How many 100 Errors do you find in my Lord *Coke*, notwithstanding all his Learning?

L. Ch. Just. I say if I was Mr. *Attorney*, I would not contest for any particular

particular man to be a Jury-man, I speak that as my advice, but I would not have it taken for Law, nor would I have it broached abroad, that tho' the Judges now were of one Opinion, yet the Law truly was of another.

Mr. Jones. If all that receive Sallery, or Wages from the King, are not to be Jury-men in the Kings Causes, then all the Deputy Lieutenants and Militia Officers, which generally are the most substantially Freeholders, are excluded from being Jury-men.

Mr. Just. Wythins. Who will say so, Mr. Jones? No Lawyer in England surely will say so.

Mr. Williams. Offices where there are no profit, will not be the same exception.

Mr. Att. Gen. But he is no menial Servant of the Kings.

Mr. Williams. What is he then?

Mr. Wallop. We hear that he is Keeper of one of the Kings Forests, and has a Fee for it.

Mr. Williams. Well, we will ask him upon a *voyer dire*.

Mr. Att. Gen. My Lord, The Fact is quite otherwise, and I desire they may make it out.

L. Ch. Just. Truly I think 'tis not *tanti* to insist upon any particular man, but I find we are in Age that is so full of Cavils, that if we act but according to the Presidents that went before us, we are thought to act as Originals, and to make new Laws, when we only follow the Rules that we have received from our Predecessors. And I say there was no such Challenge at Common Law, that ever I read of in any of our Books, nor is it any Challenge by the best Authorities extant.

Mr. Jones. I desire them to shew me any such President. That any man was challenged by one that was tried at the Suit of the King, for a Challenge to the Favour, but we must do unprejudiced things, or else there will be no satisfying of some Men.

Mr. Att. Gen. I would fain know, what one Opinion in a stragling Book is against the Currant of all our Law?

Mr. Williams. Which do you call a stragling Book, Mr Attorney? my Lord Coke's Institutes, or my Lord Rolls Abridgment?

L. Ch. Just. I say the better Opinion of the Books is on the other side, and the greater number too.

Mr. Att. Gen. First of all, I do know of my own knowledge, he is no menial Servant.

L. Ch. Just. Mr. Attorney, I do debate it for Learning sake, truly I know not the Man, nor whether he be the Kings Servant, or not, but I speak against allowing the Challenge, that if he be set aside, it may not be taken as a President, and so pass for Law that the Kings Servants can't be Jury-men. I would have you quit the man by consent, but not as a force-put, as tho' the Law were so, for the Law I think is otherwise.

Mr. Att. General. He is none, my Lord, they mistake.

L. Ch. Just. Nay, I know nothing of the man, I tell you only what I think.

Mr. Wallop. He receives Wages, or a Fee from the King for his Office.

Mr. Just Wythins. I would never for my part while I live, nor never did, while I was a practiser, stand upon any particular Jury-man.

Mr. Att Gen. He may be a Jury-man by Law sure.

L. Ch. Just. There is no doubt of it, Mr. Attorney.

Mr. Att. Gen. My Lord, If your Lordships have given your Opinion, I desire he may stand by.

L. Ch. Just. Well, Mr. Attorney waves him, Let him stand by.

Mr. Att.

Mr. Att. Gen. But for no Reason that has been offered.

L. Ch. Just. No, no, I don't hear any thing of Reason offered for it.

Cl. of Cr. Mr. Galliard. You may go down. *Thomas Harriott, Esq; Jur. Thomas Earsby, Esq; Jur. William Avery, Esq; Jur. John Sharpe, Esq; Jur. Richard Shoreditch.*

Mr. Williams. We challenge him for the Defendant.

L. Ch. Just. What is your Cause of Challenge?

Mr. Williams. There is the same exception to him.

L. Ch. Just. If Mr. Attorney will consent, with all my heart.

Mr. Sol. Gen. No, we humor'd you in one, we won't humor you any more.

Mr. Williams. Nay, here is something more clear for us, He is a Serjeant at Arms attending His Majesty.

Mr. Just. Wythins. You know our Opinions already, Mr. Williams, unless Mr. Attorney consent, we can't do it.

Mr. Williams. We only acquaint Mr. Attorney with it, we must submit to your Rule, he is certainly Serjeant at Arms, he came in the place of *Dereham* that let my Lord *Gray* escape.

Mr. Att. Gen. Pray prove it, I don't know it for my share.

Mr. Williams. Will you ask him the Question?

Mr. Att. Gen. Pray prove it. Are we to gratifie your Clyent? Pray let him better instruct his Counsel.

L. C. Just. If Mr. Attorney consent not, then he must be sworn.

Mr. Att. Gen. If there be enough without him that do appear let him stand by.

Cl. of Cr. Stand down Mr. *Shoreditch.*

Charles Good, Esq; Jur.

Mr. Att. Gen. That it may appear how fair things were carried, they would not strike out one of these Men when they came before the Protonotary, as they might have done.

Mr. Just. Wythins. Truly that was not well done, to trouble the Court when you might make your exceptions there.

Mr. Williams. We did not know it then, now we do, we offer it to the Court.

Cl. of Cr. *Sam. Rouse, Esq; Jur. Hugh Squire, Esq; Jur. Nehemiah Arnold, Esq; Jur. and John Bifeild, Esq; Jur.*

Then the Jury were numbred, and the 12 sworn were these.

Sir Charles Gerand, Baronet.

Roger Jennings, Esq;

Henry Hodges, Esq;

Thomas Harriott, Esq;

Thomas Earsby, Esq;

William Avery, Esq;

Jur. { *John Sharpe, Esq;*
Charles Good, Esq;
Samuel Rouse, Esq;
Hugh Squire, Esq;
Nehemiah Arnold, Esq;
John Bifeild, Esq;

Cl. of Cr. Gentlemen of the Jury, You that are sworn, Harken to your Charge. The Defendant *John Hambden* stands Indicted by the name of *John Hambden*, of the Parish of *St. Giles* in the Fields, in the County of *Middlesex*, Gent. (Prout in the Indictment, *mutatis mutandis*)—To this Indictment he has pleaded not Guilty, and for his Tryal puts himself upon the Country, and the Kings Attorney General likewise, which Country you are, your Charge is to inquire whether the Defendant be Guilty of the great Misdemeanour whereof he stands Indicted, or not Guilty; if you find him Guilty, you are to say so; and if you find him not Guilty, you are to say so, and no more; and hear your Evidence.

The Tryal of John Hambden, Esquire.

Then Proclamation was made for Evidence in usual form.

Mr *Holoway*. May it please your Lordship, and Gentlemen, you that are sworn, I am of Counsel for the King upon this Indictment. Gentlemen, the Indictment sets forth, that the Defendant being a Seditious Malitious Evil disposed Person, and Seditiously and Maliciously intending to disturb the Peace of the Kingdom, the last day of *June*, in the 35. year of his now Majesty's Reign, and divers other days and times, at the Parish of *St. Giles* in the Fields, in your County; did unlawfully assemble, and confederate himself with divers Evil-disposed Persons, Subjects of our Lord the King, and then and there, with those other persons did Falsly Maliciously and Seditiously consult and conspire to make an Insurrection in the Kingdom of *England*, and to provide Arms and Armed men in divers places of the said Kingdom. And the better to compleat his Evil Intentions, the said last day of *June*, did consult and agree to send certain persons, to the Jurors unknown, into *Scotland*, to invite several Evil-disposed Persons there to joyn in this Conspiracy. This is the Substance of the Charge, and to this he says, He is not Guilty; If we prove him so, we do not question but you will find it.

Mr. *Att. Gen.* May it please your Lordship, and you Gentlemen of this Jury, Mr *Hambden* stands Indicted of an High Misdemeanour, for conspiring with several others, to raise Rebellion within the Kingdom, and to crave the Assistance of the Brother-hood of *Scotland*. Upon the face of the Indictment, Gentlemen, it appears to be a very high Crime, and the matter of this indeed has been formerly in examination in other Tryals, and yet the Party you may observe do not acquiesce in those Tryals, but think the Persons accused lay under very great hardships, and that to a very great degree, as not having the advantage of Counsel, nor to have their Witneses examined upon Oath; and therefore, Gentlemen, the King is pleased to go less in this Case than in the others, That this Gentleman, who is now before the Court, may clear his innocence, if he has any Witneses to do it. And if there be any advantage that the having of Counsel can contribute to his Cause he has that allowed him too.

The Course of our Evidence, Gentlemen, will be this.

We shall prove to you that Mr. *Hambden* with five other Persons, (I shall name them) The Duke of *Monmouth*, my Lord *Russel*, Mr. *Sidney*, my Lord of *Essex*, and my Lord *Howard*, they met several times, (the particulars we shall give you an account of) one was at Mr. *Hambden's* house, another was at my Lords *Russels*, where they did contrive together, and took upon them to be a Juncto or a Counsel of Six collected out of the wisest men of the Kingdom, to consider how they might better the Affairs of the Nation, and how they might make a Stir: For they thought there was no way possible otherwise of doing it, but by their joynt Counsels to carry on a Rising. And that they might do it the Better, they resolved to crave the Assistance of *Scotland*. Gentlemen, We shall give you an account of their Consults and Debates, and shall shew you, that at length they came to a Resolution, That the rising was to be carried on joyntly in *London*, and the several parts of the Kingdom, in several Countries at once. Then they came to think, and consider whether it were not best to send into *Scotland*, to draw them in too. And thereupon it was agreed by this Juncto, That they would send thither, and the management of it was committed to Mr. *Sidney*, to send some fit Person into *Scotland*, to treat with the Male-Contents there; and the better to carry on this joynt Design, some of them were to come up to *London*. And they were to have a pretence to treat about going to *Carolina*, and the purchasing some Shares in the Plantation there, of which my Lord *Shaftsbury* was a chief Governour. We shall prove to you, Gentlemen, besides all that I have opened, That the Person to whom that trust was committed, Mr. *Sidney*, according to the Duty that

that he had taken upon him, does employ one *Aaron Smith*, which all that know him, do know him to be a fit Engine for such Counsellors, and a fit Instrument for such a Conspiracy. We shall prove he actually was in *Scotland*, and that he went into *Scotland* upon this Errand. And then we shall prove, That those Gentlemen that were sent to, and were the Persons named in their Consults to be treated with, came here soon after to Town, and as soon as ever this Plot was discovered, they fled and absconded themselves. Gentlemen, If we shall prove all this matter to you, I think it will be without any Question clear, that this Gentleman is notoriously Guilty of this High Misdemeanour. And indeed, if you observe it, one of the Persons has given Judgment against himself, the Earl of *Essex*. But the Party have been so diligent and officious as to sling that upon the Government; but that matter we shall have before the Court in Judgment to-morrow. For two of the others they have received the Judgment of the Law; for two more of them the King has been pleased to take them into his Mercy; the one is my Lord *Howard*, who is summoned to appear here to day; the other is the Duke of *Monmouth*, who has confessed all this matter, and has taken his Pardon, and we have Summoned him also to be here this day; that the World, if they will have their Eyes opened (I mean the discontented World) may see there is nothing sought but the Peace and Quieting of the Kingdom.

Gentlemen, If we prove all this matter to you, I shall be glad to hear the Defence of the Counsel, and the Defence made by Witnesses upon Oath.

Mr. *Sol. Gen.* My Lord, we will call our Witnesses, and first we begin with the Duke of *Monmouth*.

Mr. *Att. Gen.* Call *James Duke of Monmouth*.

Cryer. *James, Duke of Monmouth.*

Mr. *Att. Gen.* Call him again.

Cryer. *James, Duke of Monmouth.*

L. Ch. Just. Was he served with a *Subpœna*?

Mr. *Att. Gen.* My Lord, we will prove we have served him in all places where he was like to be met with; That we left *Subpœnas* with his Servants, who promised to deliver them to him.

L. Ch. Just. Prove it.

Mr. *Att. Gen.* Where is Mr. *Atterbury*? Swear him (which was done) Pray will you give the Court an account, Whether you did serve the D. of *Monmouth* with any *Subpœna*? In what places you were to serve him, and who you left it with?

Mr. *Atterb.* My Lord, On *Fryday* last was *Seven-night*, I was commanded by Mr. *Attorney General* to carry a *Subpœna* to serve upon the Duke of *Monmouth*, and to go to his House at *Moor Parke*, where it was generally discoursed he was. I did go and take a *Subpœna* from Mr. *Burton*, by Mr. *Attorney's* Order, and went to the Duke's House at *Moor Parke*. When I came there, the outward Gate was locked, and I went to an House where the Keys are kept, and having got the Keys, I went down to the House, and I saw there one of his Servants fothering of Cattle; and coming up to him, I asked him if the Duke of *Monmouth* was in the House? He told me, he could not well tell, whether he was or not, but he thought he was gone to *London*, for he saw the Calash, and 5 or 6 Horsemen with it, and they said in the House, that it was the Duke that was gone to *London*. I asked if there were any Servants that were nearer to his Grace in the House, that I might speak with? They said, Yes, there was the House-keeper or Steward, one Mr. *Rawkins* that attended upon the Duke. I desired to speak with him, and he came out to me; I asked him if the Duke was there? He seemed to be unwilling to give me an answer. I asked him the second time; but he did not say he was, or he was not. I told him then, I had a *Subpœna*, which I brought with me by Mr. *Attorney General's* Order, to serve upon his Grace, which was to require him to attend here this day, to testify his Knowledge in a Case between the King and Mr. *Hambden*. He told me, Sir, said he, give me your *Subpœna*, and I will take care the Duke shall have it. He took it of me, and I came back to *London* presently. As soon as I came to Town, I had a second *Subpœna* given me to serve upon his Grace, with which I went to the Dukes House at the *Cock-pit*. When

When I came there I spake with the Porter, I think his Name is *Johnson*, (but the Porter he is, and I remember him a Servant there many years) I asked him, if the Duke were there? He told me he did not lodge there. I told him I had a *Subpœna* to serve upon his Grace to appear as this day, the same as I said at *Moor Park*. Says he, Mr. *Atterbury*, I will take care the Duke shall have it to night, or to morrow morning early.

L. Ch. Just. When was this?

Mr. *Atterbury*. It was of the same day, *Friday* was seven-night last. I was told afterwards by one that I met with, that the Duke did lodge at Mr. *Row's* House, who is a Servant to the Duke, one of his Gentlemen. He lives in the *Pall Mall*, 'tis either his House or his Lodging, but they call it his House. I had a 3^d *Subpœna* given me to the same effect. And when I came there, I asked for the Duke, and a Woman came to the Door, Mrs. *Manley* (I think they call her) she seemed to make little answer to what I said. Said I, Pray will you give this *Subpœna* to the Duke, or to Mr. *Row* to give it the Duke? She took it of me, and said; she would give it Mr. *Row* certainly to give to the Duke. And yesterday, or the day before, I met Mr. *Row* at *White-Hall*, and says he to me, Mr. *Atterbury*, you brought a *Subpœna* to my House a little while ago? Yes, Sir, said I, I did, had you it? Yes, I had the *Subpœna*, says he. Then says I, I hope you gave the Duke it? To that he made me no answer, but nodded his head, and smiled, and went away.

L. Ch. Just. Now call his Grace again.

Cryer. James Duke of *Monmouth*. (But he did not appear.)

Mr. *Att. Gen.* Call *William Lord Howard*. (who was in the Court.) Pray swear my Lord *Howard*. (which was done)

Mr. *Att. Gen.* My Lord *Howard*, Pray will you be pleased to give the Court and the Jury an account what you know of any meeting by the Gentleman that is now accused and the Duke of *Monmouth*, my Lord *Russel*, your self and others, and when? Tell what you know?

L. Howard. My Lord, in *January* last was 12 Month, about the midst of *January* I was called out by Colonel *Sidney*, being then in my Lodgings in *Southampton-street*, and carried by him to Mr. *Hambden's* House, I do not know what they call the Street, but the same side of the way with the Fine House that is in *Bloomf-bury*—

Mr. *Jones.* By my Lord *Mountagues* House that now is, you mean?

L. Howard. Yes, of the same side of the way. When I came there, there was my Lord *Russel*, and the Duke of *Monmouth*, Colonel *Sidney* and I went together, Mr. *Hambden* was then in the Room where they were. Afterwards came in my Lord of *Essex*, this made up six. When they were there, we fell into Discourses—

Mr. *Att. Gen.* Pray my Lord, before you come to tell the particular Discourses, give an account how, and upon what grounds you came to have this Juncto of Six?

L. Ch. Just. If you please, my Lord, Pray give an account of the preliminary passages.

L. Howard. My Lord, After the disappointment given to an Undertaking that was begun by my Lord *Shaftesbury*, which was in *October* or *November* before, in *November* he dyed. After that, truly I cannot say, but that Colonel *Sidney* and my self might be, and were the two first that did give the Rise to it. For being in Discourse, We said it was absolutely necessary that there should be some Council erected to give some steadiness to the Motions—

L. Ch. Just. My Lord, I would not willingly interrupt you. But you seem to speak of a disappointment given to an Undertaking by my Lord *Shaftesbury*. Pray what was that Undertaking?

L. Howard. Your Lordship has heard of that before, and know it very well.

L. Ch. Just. Tho' we know it, the Jury do not. They have not heard it Judicially at least.

L. Howard. Because it has been in the Printed Books, every body I suppose knows it.

L. Ch. Just.

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L. C. J. But that they cannot indicially take notice of.

L. Howard. That is something a long History, my Lord.

L. C. J. Tho' it be we must hear it.

Mr. Att. Gen. Pray make it as short as you can my Lord.

L. Howard. So much as I can give accompt of is this. It was about the day after *Michale's* day that I came to my own House having been before in *Effex*, and that I think was *Saturday*. The *Monday* following Captain *Walcott* came to me and dined with me, and after Dinner told me My Lord of *Shaftsbury* had left his House, and had betaken himself to a private Lodgings, and had hid himself from the rest of his Friends; but had a great Kindness for me, (which Kindness truly I wish he had spared) and desired to see me, I took time to consider of it ; but I bid him go back to my Lord of *Shaftsbury* and tell him if he had any thing of an extraordinary Nature to acquaint me with, I would come and assist him all I could. He came the next day again and shewed me to my Lord *Shaftsbury's* Lodgings : He lodged then at one *Watson's* House, a Citizen, I know not what Street they call it ; but it was in a little Street down by *Wood-street*. And when I came to him, I found my Lord *Shaftsbury* very much differing from what he used to be, which was more cautious, and presently he fell to tell me that he was forced to withdraw himself from his own House, for fear of being attacked again by Sham-Charges and Plots, and false Evidence as he had before : For now he said, He saw they had the Possession of all Juries by having those *Sheriffs* which were imposed upon the City, as he said, and he could not think his own life or any Mans Life safe ; for to be accused was sufficient to bring his Life into very great danger, and for that Reason he had with drawn himself to that private retirement ; and being there he was resolved to make some speedy Push for recovering of the Liberties of *England*, that there was Preparation made in the City of several 1000 of Men that were all in Readiness to Rise, and that for his part he was resolved to be set on Horse-back ; for get on Horse-back he could not ; and that there were great numbers that were ready when he did but hold up his Finger to be drawn together at any time : That divers had been drawn out of the Country to joyn with them by insensible parties of Horse, I think he named about fourscore or an hundred. Which since I found were to be headed by Col. *Romsey* upon the day of making and declaring the *Sheriffs* ; but finding there was nothing done, he withdrew himself and his Man thither ; but there was such a general Preparation in the City, that if some Lords did not unhandsonely desert them they should be in readiness for Action quickly. I askt him who he meant ? He told me, the Duke of *Monmouth* and my Lord *Russel* had very unhandsonely deserted him ; for they had promised and undertaken to be in Readiness with Men out of several Countreys in which they had an Interest, he named *Somersetshire*, *Devonshire*, and *Cheshire*, I think, and that my Lord *Gray* should be disposed of into *Effex* to do the same there, and if they had held on this Resolution it had been such a sure Game that it could not have failed : But says he, they are started, and say they cannot be in Readiness to do it. My Lord, I very much wonder that those Persons you named should ingage in any Design, and fail of performing

what they promised! Says he, I'll assure you 'tis so. And so he proceeded to speak several sharp things of the Duke of *Monmouth* upon the account of his Ambition, that he thought to have all under his Command: Which was a Secret lurking Ambition in him, that he said, he always suspected the Duke to be guilty of. And now he found his suspicion true. That unless he might Command all, he would do nothing. But for his part since he found the matter so, he was resolved to go on alone rather than fail in his Design. Said I, my Lord, I should be very forward to concur with you in any thing; but I wonder your Lordship should step into an Action of such danger thus divided from those that are most likely to assist you in it. I cannot help it, said he, I have left my House and must go on. My Lord, said I, pray give me leave to go to the Duke of *Monmouth* and expostulate the matter with him and I will come and give you an account again. Says he, 'tis to no purpose, I dare say. Said I, my Lord, pray let me go and try, for I would not have you divided, but I will promise you this, I will not tell him I come from you, but as from my self discourse it with the Duke. Well, said he, if you will you may. This was upon *Tuesday*, I think the 3^d. of *October*, the 3^d. or 4th. So I went to the Duke of *Monmouth* the next day which was *Wednesday*, and finding him not at home at his House in *Sohoe*, and being told he was at *Moor-Park*, I took an Occasion to go to *Moor-Park*, and I came there a little after Dinner, and took him aside, and told him all this that I now have spoken about my Lord of *Shaftsbury*. Says he, I think the Man is mad, What does he mean? We did undertake to do this 'tis true; but not by that time he speaks of, and things are not ready, I know not what his own Fears make him do; but he does act so preposterously that he will undo us all. Said I, my Lord, all that I shall desire is, that there may be an interview betwixt you, and discourse the thing with one another, or else it may be a thing of very fatal Consequence for him to step into an Action of this danger and concern while you are thus divided. With all my Heart, says the Duke, I would have nothing more, I desire to speak with him. This made me recoil back again to my Lord of *Shaftsbury* the next day, and I told him all this, and desired he would give a meeting, says he, I see they are false then to say they did not engage, they were engaged, and that against this time too, the Confirmation and Swearing of the Sheriffs; and now for me to meet with them, I know I shall run out into Passion and Anger, and therefore 'tis better omitted. Said I, my Lord, I must positively insist upon it. I must have an interview between you, for 'tis a Madness for you to go on thus divided in so great a Business. I could not prevail, he would not; but he told me, if I would I might go to them from him, and let them know I had been with him; (for before I pretended to have it from a third hand, and not from my Lord himself,) and if they would be in a Readiness with what they promised from the Countrey, he would ask nothing from the City, he would take that place upon himself, if they would perform their engagement for other Parts; but he resolved to go on. So I went to the Duke of *Monmouth* again, and told him, what he said, That I could not by any means get him to an interview. Says the Duke, he is a strange Man, I know not what to do with him, we will

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will all be in Readiness as soon as we can; but it is impossible to do it so soon. I went to my Lord of *Shaftsbury* again on the *Saturday*, and did then positively engage him that he would give a Meeting to me, and the Duke of *Monmouth*, and some others. And we appointed time and place, he appointed to come out in a Parsons Habit, and a black Perrywig to his own House, which he thought the safest place, because he would not discover his Lodging to any of them for fear it should come to be known. With these Instructions I came to the Duke of *Monmouth* to prepare him about it, and proffered him to be ready the next day at Evening with my Lord *Russel* to go to him. All this while I had not spoken to my Lord *Russel*, but only to the Duke of *Monmouth*. And the next day when I came from Church to my own House, there met me a Message from Colonel *Rossy*, who I understood by my Servants had been there, and left his Name. With this Message, that he came to tell me the Gentleman that was to meet could not meet. This was so confused a matter that I was Impatient till I knew the meaning of it. I took my Coach and went directly to the Duke of *Monmouth* again, and he told me Colonel *Rossy* had been with him and told him, my Lord of *Shaftsbury* was apprehensive there were a great many *Tories* about his House, and he feared being discovered, and therefore had remov'd his Lodging, and so could not meet; but we should hear from him in two or three days. So that was the last time that I saw my Lord of *Shaftsbury*, or indeed in a direct Line did hear from him; collaterally by *Walcott* I did afterwards hear; but by this means we were at a loss. After this the Duke of *Monmouth* did tell me (for he did not own to me that he saw him, but indeed swore to me he did not see him; but I find since he did. That he would do what he could to prevent any untimely dangerous undertaking. But after this it seems they had a Meeting at Mr. *Shepherds* House, where my Lord *Shaftsbury* sent a Message to him and my Lord *Russel*; but the Duke of *Monmouth* only told me that my Lord *Russel* had met with him, and seen him; but he never owned that he had met him himself, or seen him. About four or five days after, Captain *Walcott* came to me, and told me such a day was set for the Rising. Upon which being startl'd, I had nothing to do, but recoil back to the Duke of *Monmouth*, and endeavour to stop any rash Proceedings, and it was stopped as I thought, and so it continued for two or three days, and at that time, which was in *October* there was a Rumor up and down whispered as if something would be attempted; but what it was we did not know, but thus it went on for two or three days, and then it meeting with a disappointment upon the Consultation at Mr. *Shepherds*, my Lord *Shaftsbury* took up his Resolution to be gone, and went away to *Holland*, and dyed in *Holland*. This is the Substance of that account which I can give of those former Transactions.

Mr. Att. Gen. Now give an Account of what was subsequent to this.

Lord Howard, This was in *November*. After this there being frequent Conferences between Colonel *Sidney* and me; for Colonel *Sidney* by the way knew nothing of all this, and I was caution'd by my Lord *Shaftsbury* that I should not tell my Friend *Sidney* any thing of it; and asking him the reason, why I should not? Says he, I can't well tell;

But

but you will wonder when I tell you that his own Friend *Major Wildman* has barred him and would not let him know it. The Gentleman is now dead; but I will assure you he did know nothing of this for a Month after: For he was gone into the Countrey; but after my Lord *Shaftsbury* was dead, I told him the History of all these Transactions, which he was before a Stranger to. After this, when I had acquainted him with what had been intended in *London*, and what Preparations had been made, and how what was intended had been suppressed, and in what posture affairs then stood, We then took up a Resolution to form a Council that might for the time to come give such Directions as might regulate the Motions of this Affair. Thereupon we began to think of the Persons who they should be. He undertook to speak to my Lord of *Essex* and Mr. *Hambden*, and I was to bring the Duke of *Monmouth* to a right Understanding with him in it. So I went to the Duke of *Monmouth*, and told him Col. *Sidney* did present his Service to him, and would willingly wait on him, but that he thought it would do him hurt, because he was a person of such Note, and thereupon so obnoxious that it might prejudice him to have him seen to come to him; and therefore if his Grace would please to appoint any third place, he should be very glad to kiss his Hand. Says the Duke, I do not know any where truly to appoint. Why then, said I, I will tell you a place: Let us e'en go to his House (having before prepared Colonel *Sidney* for it) and take him by Surprise and dine with him, and then there will be the less Suspicion. But, said I, you must not expect to be treated as the Duke of *Monmouth*, because he does not expect you; but take him as a Philosopher, and dine with him as he uses to dine at his own Table. Says the Duke of *Monmouth*, I care not for Entertainment; I will go with you: And there at that time did the Duke of *Monmouth* undertake to bring in my Lord *Ruffel* and my Lord of *Salisbury*. This was the only Discourse preparatory to it that ever I knew of. Within a Fortnight or three Weeks after; nay, I think it was less than Ten Days after, Colonel *Sidney* came to me, and told me, my Lord of *Essex* was very forward in it. The Duke of *Monmouth* would prepare my Lord *Ruffel*, and my Lord *Salisbury*; and he himself did not doubt but Mr. *Hambden* was very willing to be in it too; and they had appointed a Meeting at Mr. *Hambden's* House, and he would carry me thither to the House; and this was the first Meeting that I knew of; and there we met all Six.

Mr. Att. Gen. About what time was that?

Lord Howard. It was about the middle of *January*; and truly I think I could reduce it to a certain day or two by the persons where I lodged.

Mr. Att. Gen. What was debated there?

Lord Howard. When we came there every one discoursed what he would. There was a Discourse of the Time and Places where to rise; but among other things it was resolved as a principal Point, that there should be a Preparation made for the Design, by a Treaty with those of *Scotland*, and an Understanding settled with *Argyle*, and a Messenger sent to my Lord *Argyle* and others. And before this was done, we could not be ripe for any Resolution: But this must be speedily done.

L. Ch. Just. Pray, my Lord, give me your Favour, I would not interrupt

terrapt you; but to make things clear as we go, I desire to ask you, when you came first to Mr. Hambden's House, who spake first, when you were all met together?

Lord Howard, Every body discoursed what they pleased.

L. Ch. Just. But who gave an Account of the Reason of the Meeting? Will you please to recollect, and tell what you know who began the Discourse?

Lord Howard. Something introductive to it was said by Mr. Hambden, we being at his House, as 'tis natural to conceive for any Gentleman at whose House People are met, to say, Pray let us sit down, and talk of our Business. Something leading and introductive was said by him.

L. Ch. Just. Pray, my Lord, as near as you can remember, will you give an Account what was the thing he began to discourse of? Did he seem to take any Notice, or have any Knowledge of your Meeting, and other things before?

Lord Howard, It was a general Hint and Intimation to us of the Ends of our Meeting, that we were there come to consult and advise one with another how to put things into a better Method and Posture than formerly: And he desired that we would sit down and discourse of these things. My Lord, I would not charge my self with Particulars positively.

Mr. Attorn. Gen. Upon what Questions did you debate and consult, my Lord?

Lord Howard, Those were started severally. Some would speak of the Time when it should be, whether it were not convenient now or when? Others offered something concerning the Places, whether it should be begun in the City or in the Country; or both together. Others took it into Consideration what Persons were to be prepared in the several Countreys to be assisting in it that were probable to carry it on. And then some discoursed concerning the raising of Money, and then what summe should be raised, and I think that was started by the Duke of Monmouth; but I am sure the summe that he named was 20 or 30000 l. The last thing that was talked of, but which was concluded to be the thing principally to be taken care of, was the settling such a Concurrence and Correspondence with Scotland that they might chime in at the same time, that so we might give as many diversions both from home and abroad as could be at one and the same time.

Mr. Att. Gen. My Lord Howard, Did Mr. Hambden discourse of this matter?

Lord Howard, I cannot speak to the Discourse of any one in particular; for I cannot say it was put to the Vote as we formerly express it, but it may be said we were all consenting and concurring.

Lord Ch. Just. Did any of you dissent from the Raising?

Lord Howard, No, no my Lord.

Mr. Att. Gen. Did any of you oppose it at all?

Lord Howard, No, no, That was discoursed of as a thing resolved.

L. C. J. I ask you this Question, my Lord Howard, Was there any sort of Complaint made of the Government, That it was uneasie and that occasioned you to enter into these debates?

L. Howard, There was I cannot say a Complaint, because there was no Person to complain to; but it was spoken of as a matter of great grievance,

vance, that such a Force and Violence should be put upon the City in their Election of Officers, and the tendency of that as to all Juryes tho' I cannot distinctly remember the particular things.

L. C. J. You say you were talking of a Messenger to be sent into *Scotland* to my Lord of *Argyle* and others to chime in with you in this matter as you say, pray did you come to any Resolution about that, and what did you resolve upon?

L. Howard, That there should be one only at that time. And afterwards it was the matter of the debate at the next Meeting, which was that Meeting at my Lord *Russels*, which was about this time twelve-month in *February* sometime.

Mr. A. Gen. How long after the first Meeting at *Mr. Hambden's* was that?

L. Howard, My Lord, I think it was about a fortnight.

Mr. Att. Gen. Who was there?

L. Howard, The same Persons that met before. But then there was little spoken of but the Business of *Scotland*.

L. C. J. Was *Mr. Hambden* there at the second Meeting?

L. Howard, He was there.

L. C. J. At my Lord *Russels* you say it was?

L. Howard, Yes.

Mr. Att. Gen. What Resolution did you come to then?

L. Howard, Then we came to a Resolution that some Body should be sent, and we began to discourse who was fit, and *Col. Sidney* he propounded *Aaron Smith*, to some of the Company he was known, to others not; but those that did know him did approve of him as a fit Person.

Mr. Att. Gen. To whose Province was that committed of sending this Person into *Scotland*?

L. Howard, *Col. Sidney* undertook it himself.

Mr. Att. Gen. Did the rest consent to it?

L. Howard, Yes, no body did oppose it; but left it to him.

L. C. J. Did you Name the Person then that was to go?

L. Howard, He was not so named as to be with any solemnity approved or disproved; but it was left to *Col. Sidney* to manage it, and he naming *Smith* as a fit Person (he told us that by the by not to put it to the Question for our Approbation) and some of us knew the Person, others did not. I was one that did know him, and did think him a very fit Man to send.

L. C. J. Pray, my Lord, who was the Person? Be pleased to tell the Jury so as they may know it.

L. Howard, *Aaron Smith*.

Mr. J. Withins, Had you any discourse with *Col. Sidney*, my Lord, afterwards that he was sent?

L. Howard, Yes, my Lord.

L. C. J. Pray give an account of that?

L. Howard, About three or four days after this Meeting at my Lord *Russels*, I went to Visit *Col. Sidney* at his House, and while I was there in the Room, he went to his Cabinet, and out of a Drawer where there was five or six hundred pound in Gold as I could guess, he took a good many pieces, I do not know directly how many; but he took out so many as he said was three score Guineys that he was going to carry to *Aaron Smith*, I went not in my own Coach, and therefore went away with him in his Coach, and he set me down at *Southampton Street* at my own Lodging. I went no further, but he did, and he told me afterwards it was conveyed to him, and that he did go.

L. C. J. How long was that after your second Meeting at my Lord *Russels* where you say you intrusted Col. *Sidney* to send one into Scotland?

L. Howard, I think it may be less then a Week, four or five days, that I saw him carry the Money. After this he said, he had given him this Money, and was gone: And when he was dispatched, in a Week after I was making enquiries after him, and Col. *Sidney* said, he had not heard of him since he went away; but about a fortnight or three Weeks Col. *Sidney* said he had heard of him, That he was at *New-Castle* and stay'd there; but he wondered he could hear no more of him. I then went into *Essex*, and when I came back from thence, he told me, he was come, but I had never seen him, not to this day, indeed I had once appointed a Meeting with him at Mr. *West's* Chamber; but something or other happened, we did not meet.

Mr. Att. Gen. We have done with my Lord *Howard*, if they will ask him any Questions they may.

L. Ch. J. They know their time, when the Kings Attorney has done with any Witnesses then they may examine him, if they please. It they will not call your other Witnesses.

Mr. Att. Gen. Will you ask him any Questions?

Mr. Jones. No, no, by advice they are to ask him nothing.

Mr. Att. Gen. We shall give your Lordship and the Jury an account in the next place, that we have traced *Aaron Smith* into Scotland. And for that we shall call some Witnesses which indeed we did not produce before at any Tryal, because we had not then discovered so much. We shall bring you the Person at whose House he lay at *New-Castle*, and the very Messenger that was sent with him to conduct him a by-way into Scotland. Call *Sheriffe* and *Bell*.

L. C. J. Look you Gentlemen, You that are at the Bar, there you must let the Jury stand by themselves. I see there are a great many others intermingled with them, and you Gentlemen of the Jury, If any whisperer talk to you, we expect that you should tell us who they are; for we will suffer no remarks to be made but what are openly made to the Court, and the Jury by the Counsel of both sides.

Mr. Att. Gen. Swear *Sheriffe* and *Bell* (which was done)

M. Williams, What is this Man's Name *Mr. Att.*? Friend what is your Name? Witness, My Name is *Sheriffe*,

Mr. At. Gen. Pray give my Lord and the Jury an account What you know of any Person that lay at your house some time since, and whether you have seen him since? My Lord this Gentleman did not know *Aaron Smith* before, and therefore I desire *Mr. Atterbury* may be called and examined again. *Mr. Atterbury*, do you know *Aaron Smith*?

Mr. Atterbury, Yes, I know him very well.

Mr. Att. Gen. Had this Gentleman a view of *Aaron Smith*?

Mr. Atterbury, Yes, he had. He was brought where *Aaron Smith* was, and this other Person was by before him too, and I was by when they had a view of him.

Mr. Att. Gen. Now pray give an accompt what you know of the man you saw?

Mr. Sol. Gen. Where is *Aaron Smith*?

Mr. Atterbury, He is in the Kings Bench Prison, and he was brought by *Habias Corpus* to *White-hall* before the King, where these two persons were brought likewise, and there this man *Sheriffe* did own that *Aaron Smith* was the man that was at his house; and the other *Bell* owned that he travelled towards Scotland with him, and that he was hired to shew him the way into Scotland.

Mr. Att. Gen. Did *Aaron Smith* say any thing?

Mr. Atterbury, He would not Answer any thing at all, nor say a word.

Mr. Att. Gen. Pray give an account *Mr. Sheriffe*, who it was that lay at your House, and when it was, and what he said was his Business, and by what name he went?

Mr. Sheriffe, Indeed his Business I did not know; but he was at our House about the middle of February, it was thereabouts.

L. C. J. When was it? what February?

Mr. Sheriffe, The last February.

Mr. Att. Gen. You say he was at your House last February, pray tell the Court where that is?

Mr. Sheriffe, At *New-castle*.

Mr. Att. Gen. Do you keep any Inn there?

Mr. Sheriffe, Yes,

Mr. Att. Gen. What Sign?

Mr. Sheriffe, The Sign of the *Black-spread Eagle*.

Mr. Att. Gen. And what did he do there?

Mr. Sheriffe, He stayed there one Night and went away, and returned again in twelve days or thereabouts, and came to my House again.

Mr,

Mr. Att. Gen. Whither did he go from you?

Mr. Sheriffe. He went *Southward* as I suppose, I know no further.

Mr. Att. Gen. But when he first came to your House, which way went he?

Mr. Sheriffe. He went *Northward* towards *Scotland*, as he himself said. And desired to have one to shew him the way: And I sent for this Man, and when he came to him he hired him to go with him, and I was by.

L. C. J. When he first came to your house about the middle of February was twelve month, Whither was he bound then, *Northward* or *Southward*?

Mr. Sheriffe. He was going to *Scotland*, that is *Northward*.

L. C. J. And you say after he came back again, and lay another Night at your house.

Mr. Sheriffe. Yes, ten or twelve days after he did.

L. C. J. And which way went he then?

Mr. Sheriffe. Then he came *Southwards* towards *London*.

L. C. J. Did you take exact notice of the Man?

Mr. Sheriffe. Yes, I saw him before his Majesty and the Council.

L. C. J. And upon your Oath that same man you saw there was the same man that lodged at your house in February was 12 month? *Mr. Sheriffe.* Yes, it is.

Mr. Att. Gen. What name did he go by at your house?

Mr. Sheriffe. He went under the name of *Mr. Clerke*, but what his Surname was I can't tell. *L. C. J.* Had he a servant with him?

Mr. Sheriffe. He had a man with him that stay'd at our house during the time of his going *Northward*? *Mr. Att. Gen.* What did he call his name.

Mr. Sheriffe. *Wil. Langton*.

Mr. Att. Gen. Did he desire you to furnish him with a guide?

Mr. Sheriffe. He told me his Servant did not know the way, and his horse was a little lamish, and desired me to get a guide for him. For after he had dined at our house it happened to be a rainy day, and he could not go further that night, and therefore desired me to get him a man that knew that Countrey, and I sent for this same man, and he hired him; and he went along with him next morning, my Lord.

Mr. Att. Gen. Whither was he to go?

Mr. Sheriffe. Truly I did not know; but he told me he did not know the way into *Scotland*, and I directed him to a Gentlemans house at *Jadborough* in the way.

Lord Ch. Just. Is that the Road to *Scotland*?

Mr. Sheriffe. Yes, the high Road to one part of *Scotland*.

L. C. J. Did he tell you to what part or place of *Scotland* he was to go?

Mr. Sheriffe. He named the West of *Scotland*, I think he named *Douglas*, but I do not know what place certainly he designed for. *Mr. Att. Gen.* Then where is *Bell*?

Bell. Here.

Mr. Att. Gen. Had you a view of this man they call *Aaron Smith*?

Bell. Yes, I had.

Mr. Att. Gen. Give an account, whether you saw him in the North and when and where.

Bell. This man, *Mr. Sheriffe*, sent for me, I live at *New-Castle* and there I keep Hackney Horses to serve any Gentlemen, or be a Guide to them as there is occasion, and *Mr. Sheriffe* sent for me, and when I came he told me the Gentleman wanted a Guide into *Scotland*. We immediately agreed, it was upon Thursday night before that we call *Easter Eve*.

Lord Ch. Just. When was it say you?

Bell. It was the Thursday before *Easter-Eve*, so they call it with us, that is *Shrove-Tuesday*.

L. C. J. Ay, they call it so in those places, because 'tis the Even of the Fast of *Ash-wednesday*, the beginning of Lent—Well go on.

Bell. We went away on Friday the next morning on our Journey towards *Jadborough*, and the 2d day which was Saturday in the afternoon my horse tired, whereupon he left me with my horse and took the Mans man of the house where he left me to guide him, for my horse would not ride up with him being tired, and he resolving to go on, and he bid me follow him on the Sunday morning to *Jadborough* Town, which I did, and we stayed there all Sunday. And on Monday morning I saw him take horse and another man that was his guide, and away they went, as I think, he said towards *Douglas* he was going. And he pay'd me, and I returned again from him to *New-Castle* and left him.

L. C. J. Pray how far was this, you say you went with him to *Jadborough*, how far distant is that from *New-Castle*?

Bell. To *Jadbrough* my Lord?

L. C. Just. Yes.

Bell. 'Tis *Forty Miles* my Lord.

L. C. Just. How near *Scotland* is it?

Bell. 'Tis within some *six Miles* of the *English Border*.

L. C. Just. Did you see him at any time after that?

Bell. I saw him at his coming back again; being at *Sheriffs house*, his Wife asked me if I would go up and see the Gentleman that I went with towards *Scotland*: So I went up, and he made me eat and drink at the Table with him.

Mr. Att. Gen. What Name did he go by?

Bell. He went by the name of *Clerk*.

Mr. Att. Gen. Was there any Servant with him?

Bell. There was a Man that came with him as a Servant there, and was all the time at *New-Castle*, that he was gone towards *Scotland*, till he came back again.

L. C. Just. Mr. Attorney, Did this Man see *Smith* at the time the other saw him?

Bell. Yes, I did.

L. C. Just. And is that the Man that went by the name of *Clerk* at *New-Castle*, and that you went with towards *Scotland*?

Bell. Yes, It is.

Mr. Atterbury. And when they charged him with it, *Aaron Smith* did not deny it.

Mr. Att. Gen. Did you go any by-Road to get into *Scotland*?

Bell. No, 'tis the Road Gentlemen usually go to *Jadbrough*, and so on; because 'tis something the nearer way to that part of *Scotland*, as we judge it to be, therefore Gentlemen use it.

Mr. Att. Gen. Is it an high-open-Road?

Bell. Yes, 'tis the high-open Way to that part of the Country.

Mr. Att. Gen. My Lord *Howard*, Pray were the Names of any of the *Scotch-men* mentioned at your Meeting, that were to be sent for?

L. Howard. Yes; There was my Lord *Melvin*, Sir *John Cockram*, and one *Cambell*.

Mr. Att. Gen. Now, my Lord; We will give you an account, That as *Smith* went into *Scotland*, so these persons soon after came into *England*.

Jury-Man. My Lord, We desire that my Lord *Howard* would name those *Scotch-men* that were to come.

L. Howard. There was my Lord *Melvin*, Sir *John Cockram*, and one *Cambel*, one that was of my Lord *Argyles* Name and Family; and there was another Name, but I can't remember what that Name was.

Mr. Att. Gen. We shall give you an Account, my Lord, That they came immediately after this to Town; and at the breaking out of the Plot, they Absconded.

L. C. Just. Mr. Attorney, Has my Lord *Howard* his Pardon?

Mr. Attorney. Yes, my Lord, he has.

L. C. Just. Then your Lordship may be covered.

L. Howard. I can't tell, but they may ask me some Questions.

Mr. Att. Gen. Then you may be uncovered when they ask them, in the mean time your Lordship may be covered. Swear Sir *Andrew Foster* (which was done.) Pray Sir, will you tell my Lord and the Jury what you know about the *Cambell's*, and Sir *John Cockram's* being in Town? Or any other *Scotch-men* that you know of?

Sir *Andrew Foster*. My Lord, I did see those Gentlemen in the beginning of last Summer. Sir *John Cockram*, and Mr. *Morrow*, and *Cambell the Son*, I did see; but the Father I did not, but I do know he was in Town, tho I saw him not.

The Tryal of John Hambden, Esq;

Mr. Att. Gen. How do you know it?

Sir Andrew Foster. I had Messages from them.

L. C. Just. Sir Andrew, You say, you saw Sir John Cockram, and Monrow?

Sir Andrew Foster, Yes. L. C. Just. Did you see any body else?

Sir Andrew Foster. I saw Sir George Campell the Son.

Mr. Att. Gen. What became of them upon the Discovery of the Plot?

Sir Andrew Foster. Sir John Cockram did Abscond, and Mr. Monrow was taken into Custody.

Mr. Att. Gen. What became of the others?

Sir Andrew Foster. The Campells were both in Custody.

Mr. Att. Gen. Did you see any Commission they had?

Sir Andrew Foster. I did see a Commission that Sir John Cockram had.

Mr. Att. Gen. What was it for?

Sir Andrew Foster. To make a Purchase of some Plantations beyond Sea, I think it was Carolina.

L. C. Just. Ay, where my Lord Shaftsbury had an Interest.

Sir Andrew Foster. It was some of the West-Indies.

L. Howard. I did omit that passage my Lord —

Mr. Att. Gen. Pray was it discoursed then, what should be the Blind for these Gentlemen that were notorious Dissenters, that they should come to Town from Scotland about?

L. Howard. It was to carry on a Plantation in Carolina. The Scotch Gentlemen were personally known to my Lord Russel only; and my Lord Russel was to write the Letter to them, and, I suppose, did.

Mr. Att. Gen. Mr. Atterbury, What do you know of these Scotch-men coming to Town; and what became of them afterwards?

Mr. Atterbury. My Lord, about the beginning of July, Fourth, Fifth, or Sixth, or thereabouts, I had some Information, That there were some Scotch Gentlemen that had been shifting up and down, and at that time were about Black-Fryers, lodged there secretly. I immediately went with the King's Proclamation, and some Warrants that I had to apprehend some Traytors that were fled: And when I came, I found that Mr. Common Serjeant having Notice of them, had beat up their Quarters, and they were endeavouring to escape by Water; but there they were catched. There was Sir Hugh Campell, and Bayley, and Sir George Campel, and some others, I know not the Names of them all; truly I can't tell whether Monrow was not another, but Sir Hugh Campell I had in my Custody, and Bayley was immediately committed to the Gatehouse; and the rest of the Gentlemen I afterwards took in a cunning Hole by Moor-Fields, in a back house. And when I came there, I found them lying on the Bed in the middle of the Day; and had them Prisoners in my Custody two or three Months; and then they were all sent out of my hands into Scotland Prisoners. Six of them there were, my Lord, that I saw.

Mr. Att. Gen. We have done my Lord, only we desire that a word of a Record may be read.

Mr. Williams. What Record is it Sir?

Mr. Att. Gen. Of Collonel Sidneys Attainder.

Mr. Williams. My Lord, We shall desire your Judgment, whether that Record ought to be read against Mr. Hambden; I perceive by Mr. Attorney, that 'tis a Record of the Conviction of Mr. Sidney, which ought not to be given in Evidence against Mr. Hambden upon this Indictment.

Mr. Att. Gen. We make use of it, to shew how upon former Tryals, upon this Evidence, Verdicts have gone.

Mr. Williams. We are in your Judgment, my Lord, if by Law it may be given in Evidence against Mr. Hambden, who is neither Party nor Privy to it, nor Indicted for the same Offence.

Mr. Att.

Mr. Att. Gen. Let it alone then.

L. C. Just. Well, *Mr. Attorney* does not press it. What say you to it, Gentlemen, for the Defendant?

Mr. Williams. May it please your Lordship, and you Gentlemen of the Jury, I am of Counsel for *Mr. Hambden* the Defendant upon this Indictment here before you. This Indictment is a severe Indictment: It is a very high Crime of which my Clyent is Accused. How far the Evidence tends to reach it, you have heard; and I shall, with the patience of the Court, particularly observe it to you. But I shall first speak to the Indictment it self: It saies, that *Mr. Hambden* being a person of a turbulent Disposition, and Seditiously intending to disturb and disquiet the King's Peace, and to stir Sedition, and to bring the Government into danger, did Conspire, &c. As to this matter, Gentlemen, there is no manner of Proof of what the Indictment charges, as to the Disposition of the person Accused; nor that he had any other design, than what my Lord *Howard* hath now Sworn. Then it saies further, that *Mr. Hambden* did Consult and Conspire with divers persons to execute these purposes; and particularly for the making and raising of an Insurrection in the Kingdom. This is laid as the particular Fact: And for this purpose, he did further Conspire with several persons, to provide Armes and Armed-men: And for their fulfilling of this, he did further Consult with several persons, that some persons should be sent into *Scotland* to stir up the Kings Subjects in *Scotland*, to a Concurrence and Conjunction with some People in *England*, about this his evil design. How far this Indictment is proved upon the Defendant, Gentlemen, is the Question before you. He has pleaded Not Guilty, and hopes to satisfy you he is not. Gentlemen, as to what Evidence has been given you so far as 'tis Positive, and Affirmative; I mean the Testimony of my Lord *Howard* in that part, it is impossible for us that are of Counsel for the Defendant directly to contradict him with Proof, or to give a direct positive proof in answer to it: I say 'tis impossible for us to contradict him, who gives such a positive Evidence of Fact. By the Evidence of my Lord *Howard*, he tells us there were Six Persons in this Council, as he is pleased to call them. By his Evidence, three of the six are dead, my *L. Russel*, *Col. Sidney*, and the Earl of *Essex*; He himself is the Fourth, the Defendant is the Fifth, who cannot give Evidence for himself; and the Duke of *Monmouth*, who is the Sixth, being away, there is not any person in being, that should contradict my Lord *Howard's* Affirmative in this part of his Evidence but the Duke of *Monmouth*; Whom we cannot have here, since it appears by the Evidence *Mr. Att. Gen.* could not prevail to have him at this Tryal; therefore proof of that nature cannot be reasonably expected from my Clyent, to acquit himself by a positive Contradiction of what my Lord *Howard* has sworn. Then in this Case we must, as in all Cases where a person does Swear directly against a Defendant, endeavour to satisfy and perswade your Lordship and the Jury upon Circumstances arising out of this Fact, and further Circumstances attending the Fact, and by probable Arguments and reasonable Inductions out of the Evidence, that this Gentleman, the Defendant, is not guilty of what he is charged with.

In the first place, we shall observe upon the Testimony of my Lord *Howard*, that as to some things he is very Positive, and Particular: He has an incomparable Memory, and speaks particularly to Persons, particularly to Places, particularly to Times. But Gentlemen, as to that which is the principal part of his Evidence, and which most affects the Defendant, and wherein it concerns us to contradict or disprove him, he is wanting as to that Circumstance of Time. He that is so exact in his Memory as to other Circumstances, is not positive, nor any thing like positive, as to the

Times of the Meeting. For they would imagine, that the first Meeting the Defendant was concerned in, was at his own house. He describes the House and the Place very exactly, but as for the Time, he only says it was about the middle of *January*: He carries other things in his memory positively; and whether it might not be expected in a Case so remarkable as this, and which so nearly and highly concerned himself, that he should be as particular in the Time, as he is in other things, you may rationally judge. His Lordship sometimes is very particular as to Time: He tells you in his Relation about my Lord *Shaftsbury*, that his going to him, was on the *Saturday* after *Michaelmasday*; and then he pursues it to the Second and Third of *October*. He is positive to many several Days; upon which I would observe, that he being particular to a Day, as to other things, may well be expected to be ready, (if it be true,) to be as particular as to the Time of this Meeting: But therein he is to seek; he is doubtful as to that. And you must give us leave Gentlemen, to make this Observation, That since he will not be particular to that Time, we do apprehend that he gives himself a little Loote, that we may not meet with him to contradict him in that Circumstance: For if he should be positive therein, as he is in the other matters that concern not the Defendant, we might perhaps by clear pregnant Circumstances contradict, if not disprove his Lordship, that it is not probable, (if possible,) it should be true what he affirms. But Gentlemen, we must answer it as well as we can; and since he is so Cautious, we must meet him by Arguments in another way. Another thing we should observe upon my Lords Evidence, is this; That my Lord, tho he be particular as to many Facts and things relating to my Lord *Shaftsbury*, where he names other particular Persons, I think Coll. *Romsey* and *Walcot*, and names the particular Discourses, particularly instancing in them between him and my Lord of *Shaftsbury*, between him and *Walcot*, and between him and other Persons; yet he has not made use of any one Circumstance of Fact in this Case of the Defendant's now before you, that does justify what he has said, save only that of *Aaron Smith*; not any one Circumstance of Fact. So that there is no more than the bare Saying of what my Lord *Howard* is pleased to deliver no more than his Oath, nay, no more than his Observation, and Inference of much of what passed in the Company of several persons, without any concurring Circumstances in Fact to Justify or Confirm his Testimony. It might have been an easy matter, if all that my Lord *Howard* says was true, that there was such a Meeting at Mr. *Hambden's* House by such and such Persons, to prove that such Persons, or some of them, met there. But that there should be no Person to prove, that these Gentlemen, or any of them, were there; nor any other Fact or Circumstance in the world, to go along with my Lord *Howard* to justify his Asseveration, is very wonderful, and may well make it doubtful that it should not be true: And the rather Gentlemen, (if it be true as my Lord *Howard* would have it) because there was a second Meeting of all these persons at my Lord *Russell's*, which was so publick and open a place, and yet no man to Concur or go along with my Lord *Howard* in any one thing; no particular Fact assigned to justify his Testimony as to this Meeting, is strange, if it be true.

So then Gentlemen, there is no more than what my Lord *Howard* has Sworn, without any one Circumstance to back it, to prove the Defendant Guilty. My Lord, taking this upon the main of my Lord *Howard's* Evidence, it will be pretty hard too upon the nature of the Fact, that he is pleased to prove against this Gentleman, to make an Answer to it: And truly, I think as hard for you to believe it. Gentlemen, He would imagine, That there should be men Raised, men Armed, a discourse of Money, and this done, as he would have it, about the middle of *January*; and yet nothing at all done, though there

appears

appears no manner of Discovery of this very evil Contrivance, till about July. Neither is there any thing done in order to the Raising of Men, the Arming of Men, or the levying of Money all this while. So that there is no one Fact of any kind whatsoever, that goes along with what my Lord Howard has said.

My Lord and Gentlemen, Another thing we would desire to observe, is this, and here we shall begin with what we have to say, as to our own Arguments and Circumstances, that we have to take off from the Testimony of my Lord Howard in this case: In the first place, it appears by the Evidence of my Lord Howard, That he was very deep in a Conspiracy against the Government, and to make a disturbance in the Kingdom long before this, that he now speaks of against the Defendant, that is plain enough; for he tells you, That my Lord Shaftesbury and He at Michaelmas were contriving of Projects to Overturn the Government, and raise a Rebellion. It appears plainly by his Evidence, That my Lord Shaftesbury, when he left his house, was resolved upon it, and my Lord Howard was very Sollicitous to carry on the same Design; nay, he was so Active in it, that he tells you, That he did create Messages between my Lord of Shaftesbury, and the Duke of Monmouth, and would needs go by a false insinuation of his own, to draw in the Duke of Monmouth, by telling his Grace his Information he had from Walcot, and not saying he came from my Lord Shaftesbury, with whom he says he had been discoursing; but he would put it under some sort of Disguise, the better to prevail. So that it appears, my Lord was very Criminal, and Guilty, in this Case. Why then Gentlemen, my Lord being so highly Criminal, and there being a Discovery of this Conspiracy by Keeling, and Romsey, and West, having made a more manifest Discovery, and this happening in July, Then it was high time my Lord Howard might conceive for him to Secure himself, and save one, he being thus Guilty, as he declares: It is but reasonable to conjecture, he then began to place his Security in a Pardon; and that there were no other means to save his Life; and that the way to it, must be by some further Discovery of a Conspiracy against his Majesty and the Government; And having since obtained a Pardon, it is agreeable, That whatsoever my Lord Howard has done in this Case, he has done for his own sake, to purchase his own Pardon for a Treason he was so deep in, and to out-do all the Witnesses that went before him, by fresh Testimony against the Defendant and others: This might incline him to go an Inch or two, of more, beyond the Discovery of Keeling, West, and Romsey; to have but said the same thing that was proved by Three or Four Witnesses before him, might not perhaps have availed him: may not the indifferent believe it in this Case, to be the Interest and Security of my Lord Howard, by these means to merit his Pardon? May it not be believeable, that what he hath said, he hath said only for his own sake, and that he has, by exposing this Gentleman, and the Blood of others, procured himself a Pardon?

L. C. Just. What do you mean by that, Mr. Williams?

Mr. Williams. By being a Witness against the Defendant and others, he has procured his own Pardon.

L. C. Just. That is a little harsh Expression——

Mr. Williams. My Lord, I explain myself thus——

L. C. Just. 'Tis an harsh Word, and too roundly expressed; You had need to explain your self; 'Tis a little too rank, as though the King's Pardon were to be procured by Blood.

Mr. Williams. My Lord, I intend nothing of hardship, or amiss, but to speak according

according to my Instructions, and to make the best Observations I can out of the Evidence for my Clyent: I will exprefs my self as well as I can, That my Lord *Howard* being a Witness against Men in a Case of this high Nature; and there being other Witnesses before, and besides himself, to the Discovery of the late Conspiracy against the Government, it concerned him to give an home Evidence in the Case, or else he could not have any expectation of his Pardon: For if he had done no more than what others had done before him, when there were three Witnesses besides, and they had got the start in the Discovery, his discovery had been in vain; and therefore he was concerned perhaps to strain, that he might make such a Discovery as might answer his end; and this will arise naturally, I suppose, out of what has happened in this Case: For it seems, though it was something long before he got his Pardon, now he has it. My Lord, another thing is this, How far my Lord *Howard* will be credited in this Matter, we shall leave his Credit to you Gentlemen, upon what we shall prove. For we shall make it out by persons of great Honor, and persons of great Integrity, That upon Discourse concerning this Conspiracy, my Lord *Howard* did declare, That he knew of no Persons that were Guilty of having any hand in it; he declared it upon his Honor, he declared it upon his Religion, and he used all the Asseverations that were possible for a Man to offer, to make himself believed.

My Lord, It may be Objected, as it has been some times, that that was to out-face the Conspiracy, and so stop the Prosecution of that he knew himself so Guilty of: But however, thus far we may make use of it for the Defendant, That if my Lord *Howard* would, in the Face of Heaven, pawn his Honor, his Trust, his Conscience, and his Religion, to assert that which was not true, and under all those Vows and Engagements, affirm an Untruth; a Man that would deal so, and speak an Untruth with that Solemnity, I think is not a Person of the same Credit, as a Person of certain known Truth and Veracity. For if a Man will say one thing one time, and that with solemn Vows and Asseverations, and Swear another thing the quite contrary another time, he does not stand so fair for Credit, I think, as he that alwayes maintains, and avows the Truth. So far we may make use of it very safely, I think, as to my Lord's Credit.

My Lord, Another matter that we have to urge, is, That since the Tryal of my Lord *Russel*, and since the Tryal of Collonel *Sidney*, my Lord *Howard* has in discourse owned, that my Lord *Russel* died Innocent. If that be true, it will have a great weight sure with you Gentlemen, to discredit my Lord's Testimony: For then he hath Contradicted what he hath Sworn. For if my Lord Swore, that my Lord *Russel* was Guilty, as all the World knows he did; and afterwards Soberly, and Publickly, shall have said he died Innocent, he has contradicted his own Evidence, and his own Oath; and sure is not to be Believed as to what he Swears now against the Defendant. My Lord, It did not rest there; but since the Tryal of Collonel *Sidney*, it will be proved by Witnesses, that my Lord *Howard* did declare, That Collonel *Sidney* had hard Measure. This will be proved by Witnesses; and 'tis rather to be presumed, He meant hard Measure as to his own Testimony, which he was best knowing of, than of any thing else as to his Tryal. Now, how this Person of Great Honour can Solve this, and how it can stand with his Oath, and his Honour; I will leave it to you Gentlemen to judg of it. My Lord, I have another matter to say, That with me seems to have very great weight: My Lord *Howard*, upon some occasions has said, being in discourse with a very great Intimate of his, and the man being speaking of the World to come, speaking of
Eternity,

Eternity, speaking of the Immortality of the Soul, speaking of the Rewards and Punishments of another Life; my Lord Howard should say to him, *How long wilt thou persist in this Folly? How long wilt thou be so Foolishly prevailed upon, as to believe the world was ever Made, or will ever have an End?* My Lord, If a Person be of that Opinion; and a Mans Judgment in such things will discover it self in his Words; How far the Testimony of a man of that persuasion shall influence a Jury when he stands single, when there is no Fact to Justify him, in point of probable Circumstance, will be easily observable, and I must leave it to the Gentlemen of the Jury to consider.

My Lord, We have another saying of my Lord Howard, which we shall give you an account of in the Proofs, and that was in Relation to his Pardon. Being free in discourse, as my Lord is a Man very liberal that way; and his Friend inquiring whether he had his pardon: No, says he; *Nor I cannot have it, till the drudgery of Swearing be over.* Truly 'tis a very odd thing, That a Man should call that Drudgery that is his Duty. To testify the Truth, is as much the Duty of every honest Man, as any thing else. Men have died for the Truth; and we look upon those as Martyrs, and the best of Martyrs that dye for the Truth. Now, that this Noble Lord, or that any man should call this a Drudgery, which is so manifest a Duty, by giving a true Testimony to preserve the King's Life, and support the Government against the Contrivance, and Conspiracies of Evil men, is but an odd Infination; and truly I think is rather to be taken in this sense, as to my Lord, *That he did strain a little to make his Discovery the more profitable to him; and so did say more (so far I may safely go) than any one else did say.* And my Lord, This is that that I would observe upon the first part of the Evidence.

As for that part that Concerns Aaron Smith, the Evidence given by Shetiffe and Bell, I submit that to your Lordship, how far that can any way affect Mr. Hamblen the Defendant. It is introduced to Fortify the Testimony of my Lord Howard, and it is introduced by himself thus: That at their Meeting at Mr. Hamblen's House, there was a Discourse of some Assistance to be had from Scotland; but says he, at the second Meeting at my Lord Russels, then it came to a further discourse, and Collonel Sidney did undertake to name a Person to send thither; and a Person was named; he does not say Mr. Hamblen was concerned in it, or that Mr. Hamblen named the man, or any thing particular as to Mr. Hamblen, more then that he was in the Company. Mr. Hamblen had no hand in the undertaking, or sending him into Scotland; that was altogether the part of Mr. Sidney; save this, that he says my Lord Russel Writ the Letter that was to go by him. It does not appear Mr. Hamblen was at all concerned in it, but only was there.

L. C. Just. And consented to it?

Mr. Williams. I would not strain any thing my Lord, further than the Evidence is.

L. C. Just. Nor do not Misrepeat it neither.

Mr. Williams. I design not any such thing, my Lord.

L. C. Just. But you do though: For he Swears it, every one of them consented.

Mr. Williams. By silence it must be then. For he does not say, That he said any thing. He Swears only Collonel Sidney undertook to manage it, to send a Person; and my Lord Russel to write the Letter.

L. C. Just. And all the rest Consented to it.

The Tryal of John Hambden, Esq;

Mr. Williams. What is meant by Consent, when nothing was said, I must leave to the Jury. I must agree, the *L. Howard* did Swear, that my Clyent was in their Company, but how far he did, or did not Consent, does not at all appear; and how far this will Charge my Clyent, I must leave to you Gentlemen. But the Proof as to this matter, stands thus; that *Aaron Smith* was at *New-Castle* in *February* last, that he went publickly. Now, my Lord *Howard* says, that he went to agitate a Confederacy between the Malecontents of *Scotland*, and those in *England*. Now it is strange, that a man that was to agitate such a Concern, should go publickly with a Servant to *New-Castle*, so publickly as to be known again; and of his own accord, tell them he was going to such a place in *Scotland*. And be it so in Fact, Will any man apply this to any thing was done before (as my Lord *Howard* says about a Consultation to joyn in Rebellion?) Will any man think, that he should talk at that kind of rate, if that were his Employment, and tell whether he were going? But I rely upon this, in point of Evidence. 'Tis not proved yet, that *Aaron Smith* was in *Scotland*. That he came within Six miles of the Borders of *Scotland*, is proved; but it is not proved he was in *Scotland*, or did Agitate any Conspiracy there; or did any thing more, than go within Six miles of the Borders of *Scotland*. But then they would press it further, and they say, that there were some *Scotch* Gentlemen, that in the Summer came here into *England*, and that they hid themselves, when the Plot was Discovered. It does not appear my Clyent had any Conversation with these *Scotch* Gentlemen, or any of them, or was ever in their Company. 'Tis a very remote inference to bring any thing of this to affect my Clyent in this High Charge.

My Lord, We shall add one thing more to disprove that part of the Indictment, that lays the Imputation of Turbulency and Sedition to the Charge of Mr. Hambden; and which also will shew the improbability of his being concerned in any thing of this Nature. We shall prove him to be a Person of a sober Conversation, of a retired Life, and studious Disposition; and as an Evidence for the Defendant, we shall prove, that he, in *October* 1680. left *England* for his Healths sake, and went into *France* for the recovery of his Health. He continued there till about *Michaelmas* was Twelve Month, then he returned. 'Tis true, he continued in *England* from *Michaelmas*, to the time they speak of; but we shall make it plain, that in *February*, my Clyent, and my Lord *Mountain* had adjusted matters between themselves, to go the beginning of Summer again into *France*, there to continue and abide some time for their Healths. Here is a strange kind of imagination, that this Contrivance between my Lord *Howard*, and my Lord *Shaftesbury*, that was going on before this time, and that was Disappointed, and my Lord *Shaftesbury* went away, and afterwards Dyed in *Holland*, was taken up by my Clyent, and those other Persons when my Clyent, as we shall prove, never intended to stay in *England*. My Lord, he was a Parliament-man in both the last Parliaments, but appeared in neither of them, being all the while in *France*, for the Recovery of his Health. We shall prove him to be one studiously inclined, that he lived a Retired Life, and kept very little or no Company; and you will hear from Persons of very great Honour and Quality, what he is, as to his Person, and as to his Opinion; and then we shall submit it to you Gentlemen of the Jury, whether you can believe him Guilty of this he is Charged with, which is your Issue. You are to try, whether he be Guilty, or Not Guilty of the Crime Charged in the Indictment.

Mr. Wallop. My Lord, and Gentlemen of the Jury, I desire to make one Observation, before we call our Witnesses.

L. Ch. Just.

L. C. J. Pray do not take up our time altogether in Speeches, but go on to your Evidence.

Mr. Wallop. I desire to observe but one thing, my Lord.

L. C. J. Make your Observations at last, but spend not our time in Speeches. I know you will expect to be heard at last, and so you shall whatever you will say.

Mr. Williams. Call the Earl of *Anglesey*, the Lord of *Clare*, and Lord *Paget*.

Mr. *Ducas*. (who appearing was sworn) Now we have him here we must begin with him, my Lord. Mr. *Ducas*, Pray what did you hear my Lord *Howard* say at any time concerning this Conspiracy, and who were concerned in it, and who were not?

Mr. *Ducas*. My Lord *Howard* came once to the house of Colonel *Sidney*, I believe it was about 8 days after the Imprisonment of Colonel *Sidney*, and when he was in the house, I ask't him, What is the matter my Lord? he did answer me, he was told there was a Plot against the King and the Duke, and one general Insurrection to be made, and that Colonel *Sidney* sent a man into *Scotland*, to which thing my Lord *Howard* swore laying his hand on his breast, saying, *God knows all things, and God knows I know nothing of that; and I am sure if Colonel Sidney had known any thing, he would tell me;* and I said, what is the matter, my Lord? are you afraid? and he made answer to me, *No honest man is safe in his own house, I pray you lend me a Bed to lie in.* And he asked me about the Goods of Colonel *Sidney*, because of the Plot and such things, and he desired to have them removed to his house; and he said, rather then go to the Tower he would do any thing. Mr. *Williams*, Speak again to the Jury that did not hear you, what said my Lord *Howard* to you?

Mr. *Ducas*. He said, rather then to be a Prisoner again he would do any thing. Mr. *Williams*. Who to be a Prisoner again?

Mr. *Ducas*. My Lord *Howard*. Mr. *Att. Gen.* What things were spoken of? Mr. *Ducas*. He said he would do any thing.

Mr. *Williams*. Were you speaking of the Conspiracy? Of the Plot?

Mr. *Ducas*. He spoke of the Plot, and said he knew nothing of it.

Mr. *Williams*. What did he say Sir?

Mr. *Ducas*. He said to me and swore, he knew nothing of it, and called God to witness.

Mr. *Williams*. Pray did he then say he would do any thing rather then go to the Tower, when you were talking of the Plot and Conspiracy?

Mr. *Ducas*. Yes, he would do any thing rather then be a Prisoner again.

Mr. *Att. Gen.* Pray what did he say?

Mr. *Ducas*. He raised up his hands on high, and said, he knew nothing of the Plot, or of the Insurrection, or that Colonel *Sidney* had sent any man into *Scotland*. Mr. *Williams*. When was this?

Mr. *Ducas*. I believe it was 8 or 9 days after the Imprisonment of Colonel *Sidney*. Mr. *Att. Gen.* What day of the Month, and what Month was it?

Mr. *Ducas*. He was Imprisoned about the end of June.

L. *Howard*. My Lord, it would be necessary that I should make an answer to this, and I know not whether I should make a particular answer to every one; for here is a whole set of Witnesses, I see.

L. C. J. No, let them alone. You must not interrupt them, they must go on with their Evidence; and when it is a fit time for you to answer them, the Council for the King will call you.

Mr. *Williams*. Pray swear Mr. *Howard*. (which was done) Pray Sir, will

will you please acquaint my Lord and the Jury what you know, of what my Lord *Howard* has said of the Plot, and who were concerned in it?

Mr. *Howard*, My Lord, what I have said is in the Paper of Mr. *Sidney's* Tryal, and truly I can say no more than what I said there.

Mr. *Williams*, pray speak out Sir, and tell it again to this Jury.

Mr. *Howard*. I was told I spake it very loud then.

L. C. J. Pray Sir speak as you please, We wont direct you in what Key you shall speak. Speak in what Key you will.

Mr. *Howard*. Then if you will have me speak it, I will speak it as loud again. My Lord, is Mr. *Hambden* here?

L. C. J. Yes, there he is.

Mr. *Howard*. In the first place I do not know Mr. *Hambden*, My Lord, I cannot promise to speak the very words that I spake the last time, I cannot make them so fit as one tally fits another.

Mr. *Att. Gen.* Consider, Sir, you were not Sworn then, you are Sworn now, That is the difference, and therefore pray consider of it.

Mr. *Howard*, My Lord, As near as I can, I will repeat the same words again, I had little Acquaintance with my Lord *Howard*, But meeting him often at my Brothers House, (and being he was extraordinary pleasant Company, I must needs say that he was so, and a Man of great Wit) and I coming from *White-Hall*, he asked me what news of the Plot? I told him there were some People that were in the Proclamation, or would be, and I named their Names. Says he, I know none of them except *Rombald*, I think; and by chance I met him passing through the Old Exchange, and he saluted me very kindly. After this my Lord *Russel* was taken, and when my Lord *Howard* heard that, says he, then we are all undone. And I very much fear it is a Sham Plot, since they have seized upon my Lord, and I doubt he is a lost man. After that, I think as near as I can remember — The next thing was this — If you look upon the Book, you will see what I said there.

L. C. J. We are not to look upon the Book, man. You must give your Evidence your self Mr. *Howard*, I hope you do not Swear by Book? Let the truth come out in Gods Name, whatever it be.

Mr. *Williams*. Ay, my Lord, We desire to have truth come out.

L. C. J. Ay, whether it be of one side, or the other, God forbid but truth should be spoken. Mr. *Howard* go on.

Mr. *Howard*. Then my Lord Colonel, *Sidney* was taken, and says my Lord, I am extremely troubled for Colonel *Sidney*, for he is my very good Friend. said I, why are you not concerned for my Lord *Russel*? He is of your Blood, says he, he is a man without exceptions. There is no man of such honor as he, but I am concerned for Colonel *Sidney* as that particular man that has obliged me above all the World, but I never heard my Lord *Howard* name Mr. *Hambden* in all my life.

Lord *Howard*. Ife give you a reason for it My Lord, if you please, why I said so.

L. C. J. My Lord, This is Evidence for the Defendant. If the Kings Counsel will call you afterwards to make Answer to any of these things, then is your time to speak. We will not let them interrupt you when you come to speak, nor must you interrupt them now. We are bound to hear both sides, and so by the grace of God we will do.

Lord *Howard*. My Lord, I desire both he and his Brother may stay in Court, for I have something to say to them.

Mr. *Williams*.

Mr. Williams. Pray what did you hear my Lord Howard say concerning the Plot?

Mr. Howard. He did deny it positively, and said they acted nothing but what was Legal, and he said it 500 times over.

Mr. Williams. Did he deny it? Mr. Howard, Yes he did.

L. C. J. But when he said they acted nothing but legally, what did he mean? Was this Plot legal?

Mr. Howard. I had former Discourses with my Lord Howard at other times, and I asked him; My Lord, what tends all this to? Your going up into the City and making these meetings? says he, we intend nothing but what is legal. There is not one man in the Company that I know of, intends any thing else.

Mr. Williams. What was my Lord's Opinion of the Plot in June or July, or August?

Mr. Howard. He said he knew nothing of it, nor could he believe there was any such thing. When those Persons were named that were to kill the King, Lord Bless me, said he, can there be such a thing in nature, that any men should be so wicked, but that there is one man of Honor or Estate, or Conscience that ever had any such thought, it can never enter into my Head, I can never believe it. Mr. Williams. When was this?

Mr. Howard. When Rombald and those other People were put into the Proclamation.

Mr. Att. Gen. Mr. Howard, Then I will ask you your Opinion, whether in your Judgment, every man that was in the Plot could not have said so much?

Mr. Howard. I suppose every man in the Plot would have defended himself as well as he could, but I cannot tell what way.

Mr. Thompson. Sir, did he barely affirm it, or with Asseverations and Imprecations?

Mr. Howard. My Lord, was not upon his Oath before me.

Mr. Att. Gen. Mr. Howard. Don't you believe a great many that were concerned in this Plot would deny it?

Mr. Howard. I am to give my Opinion only for my self, not for other People.

L. C. J. Have you done with him? Mr. Williams. Yes my Lord.

L. C. J. Then go over Sir.

Mr. Howard. My Lord, I am troubled with Fumes, and cannot well endure a Crowd, therefore I desire I may have leave to be gone.

L. C. J. You may go if you please.

Mr. Williams. Call Mr. Edward Howard, (but he did not appear.)

Then Swear my Lord of Clare and my Lord Paget,
(which was done)

L. C. J. Well what do you ask my Lord of Clare?

Mr. Williams. My Lord of Clare, Will your Lordship please to acquaint the Court and the Jury, what you heard my Lord Howard say concerning the late Conspiracy?

E. of Clare. My Lord, Some indisposition I have had of late, together with the great rigour of the season has confined me to my House this six Weeks, so that I should not come here, but upon this Summons of a Subpoena, which I thought I ought not to refuse. I suppose I need not repeat much of what was said at Colonel Sidney's Tryal.

L. C. J. My Lord, You must give what Evidence you have to give now,
Mr. Williams

Mr. Williams. My Lord, The Gentlemen of this Jury have not heard it, therefore you must say it all over again to them.

E. of Clare. Sometime after *Mr. Sidney* was taken, my Lord *Howard* came to see me, and complaining of the Times, said, That all things were very sad and dangerous, and if ever he was questioned again, he would not Plead, but desire them only to count Noses, for the quickest dispatch he thought was best: I replied, sure his Lordship was in jest. He said, No, he was in earnest, for he was confident if he came to Tryal, they would have his Life, let him appear never so innocent. I said, I hoped not so, it was only his Lordships fear, and because of that, I thought it might be presumed he would venture much, rather than be Tried. And discoursing of the late Primate of *Armagh's* Prophecy; He said, for his part, he thought the Persecution was already begun, and he did believe it would be very sharp, but withal, he hoped it would be but short; and then he began to wish himself beyond Sea till the Troubles were over; and in compliance with his Lordship I did wish so too. But as to *Sidney*, he did with great asseverations very much assert his innocency. He said, he thought he was not guilty of any of the things laid to his Charge; and spake with large Encomiums in his praise, as he had obligation to do, and seemed to bemoan his misfortunes; which I said I had then reason to believe he was real in, for I believe never any man was more engaged to another than he to Colonel *Sidney*. I told him there was a discourse of some Writings of *Mr. Sidney's* that were taken; he said he was confident they could make nothing of any Writing of his; I told him, I supposed he meant legall they could not do it, This was the most he said, as to *Mr. Hambden*, he mentioned nothing that I know of.

Mr. Williams. Did he seem to declare any Opinion about the Plot or Conspiracy in general, That there was any such thing or not?

E. of Clare. I do not remember it.

Mr. Att. Gen. My Lord of *Clare*, Did you never hear my Lord *Howard* before this complain of the Government that it was amiss, and was to be rectified?

Earl of Clare. Yes, he often did complain. Every body knows my Lord's way of discourse.

Lord Howard. Pray will you ask him, if my Lord of *Clare* used to fall out with me upon those discourses.

E. of Clare. My Lord was always good Company!

Mr. Att. Gen. You mean a *Propos*, My Lord.

E. of Clare. I understand what you mean by a *Propos*; you are a Learned man, I know.

Mr. Soll. Gen. My Lord of *Clare*, If I apprehend your Lordship aright, my Lord *Howard* was discoursing of the Primate of *Armagh's* Prophecy, and said he thought the Persecution was already begun, and would be sharp, tho' he hoped it would be short, and he wished himself beyond Sea till the Troubles were over, and your Lordship wished your self so too?

E. of Clare. No, I said in compliance with his Lordship, since he wished himself beyond Sea, till the Troubles were over, I wished he were there too.

L. C. J. But I perceive all these discourses concerning the Government are reckoned but jests and matter of Laughter, but 'tis a very rank way of jesting I assure you.

Mr. Williams.

Mr. Williams. My Lord, We call our Witnesses seriously, they are the Kings Council that jest.

Mr. Att. Gen. Was this before my Lord *Howard* was taken?

E. of Clare. Yes, but after *Mr. Sidney* was taken.

L. C. J. Well, who do you call next?

Mr. Williams. My Lord *Paget*, Pray what have you heard my Lord *Howard* say concerning the Plot, and when?

L. Paget. My Lord sits there, and I believe he may remember it was about the 7th of *July*, the *Saturday* before my Lord went into the Country, to the best of my memory, which was, I take it, the 9th of *July*. Upon *Saturday* the 7th at Night my Lord came to see me, I told him I was glad to see him abroad, and not concerned in the Disorders that were then so general; My Lord told me he had been wished joy by several, and he took it ill, because it looked as if he were guilty. 'Tis true, my Lord was a man of great finess and readines in discourse, and came easily into all Company, my Lord said that was true, but he had so carefully behaved himself, that he was sure they could not touch him with any thing, nor did he know any thing of any body else that he could charge them withal.

Mr. Williams. When was this my Lord? *L. Paget.* This was the 7th of *July*.

Mr. Att. Gen. Pray good my Lord, Why did you joy my Lord *Howard*, had you any reason to mistrust my Lord?

L. Paget. No other reason, then because I knew he was a man of great freedom in discourse, and might be concerned upon that account.

Mr. Att. Gen. And he would frequently discourse against the Government I suppose?

L. Paget. No, I never heard my Lord discourse against the Government in my life.

Mr. Williams. Sware *Dr. Burnet* (which was done) Pray will you Doctor acquaint the Court, what you heard my Lord *Howard* say concerning the late Plot, and when?

Dr. Burnet. My Lord *Howard* came to see me the day after the discourse of the Plot broke out, *Thursday* I think it was, on *Wednesday* it began to be talked of. The thing was little understood then, but in general a Plot was discovered, and my Lord with a great many Protektations, lifting up his hands and eyes to Heaven, protested he knew of none, and believed there was none, and spake of the whole thing as a Contrivance.

Mr. Williams. This was the day after the Discovery broke out?

Dr. Burnet. Yes, the day after that I first heard of it.

Mr. Williams. Had you any other discourse with my Lord about it?

Dr. Burnet. I had not seen my Lord before of some Months. And then he spake a great deal to me. He told me he had been in *England* and after that he went to the *Bath*, and went so early and came away before the many came, because he would avoid all danger. And he expressed great apprehensions of fear of Sham-Plots, and spake of False Witnesses and former designs of that Nature. The truth of it was, one had possessed me much with a belief of the thing, it being then but a secret, but he strove to dispossess me of that belief, and his whole discourse ran upon that for an whole hour, and expressed, as I said, great fear of some Sham-Contrivance, and spake much of false Witnesses, wishing that he were beyond Sea.

L. C. J. What, he spake as if there were like to be great heats and stirs, I suppose?

Dr. Burnet. No, the talk was about the Discovery, which he said he believed was a Contrivance.

Mr. Williams. Did my Lord *Howard* use to come to you some times?

Dr. Burnet. Yes, he used to come frequently to see me.

Mr. Att. Gen. *Dr. Burnet*, Pray let me ask you one Question, you spake of solemn Declarations and Protestations made by my Lord *Howard*, what gave the occasion to such a Solemnity?

Dr. Burnet. I will tell you the occasion truly, tho it was never asked me before. It was thus, I being possessed with the belief of the thing by one that assured me it was true, and would soon appear to be so, I argued upon that belief to convince my Lord *Howard*, that it was true, and he argued a great deal to dispossess me of that belief. And I said, if there be any such thing I pray God forgive them that are concerned, but certainly it is one of the monstrouslest ill things that ever was

done; for hereby they have done all that could be done to ruine the Protestant Religion. He was smoaking a Pipe of Tobacco, and he laid down his Pipe, and lifted up his hands and eyes to Heaven, and protested to me, he neither knew of any such thing, nor believed it, but it was all a Contrivance.

Mr. Att. Gen. By his discourse, you possibly might understand what he meant, did he mean being privy to the Murder of the King or the raising of Rebellion?

Dr. Burnet. There was not a word then of the Assassination, but it was all of the Plot in general. *Mr. Att. Gen.* Did he make no distinction?

Dr. Burnet. We talked of nothing but Plot in general. For the particulars were not then known. It was only about the general notion of a Plot.

Mr. Att. Gen. Pray what was the reason you had to believe it?

Dr. Burnet. There was a Gentleman from *Whitehall* that came to see me, and he did assure me it was true, as being one that had it from a Privy-Councillor. This was on the *Wednesday* when the Council sate long about it; and nothing of particulars was then let out, but only a discourse in general of such a thing, and he said it would be found to be a certain truth.

Mr. Att. Gen. But Doctor did not you a little wonder at the carriage of my Lord *Howard*? That a man that was not accused, that you heard of, should make such solemn Protestations?

Dr. Burnet. My Lord, he said just in this manner as I have told you, when I said, Pray God forgive them if any have been concerned in such a thing, he laid down his Pipe, and lift up his hands and eyes. Whether he thought I suspected him or no, I can't tell, he best knows his own thoughts.

Mr. Att. Gen. Did he say a word of *Mr. Hambden*?

Dr. Burnet. No, there was not any particular person named.

Mr. Recorder. Doctor, he would not make you his Confessor.

Dr. Burnet. His whole hours discourse was to dispossess me of the opinion and belief I had entertained of the Plot.

Mr. Just. Holloway. This was about July you say?

Dr. Burnet. I cannot remember the very day of the Month, I believe it was the latter end of June, but I am sure it was before any body was Committed, that we heard of.

Mr. Recorder. *Dr. Burnet*, you say you did believe there was a Plot then?

Dr. Burnet. Yes, I did so, and he laboured to dispossess me of that belief.

Mr. Recorder. Pray do you believe it now?

Mr. Williams. What a question is that, *Mr. Serjeant*?

Dr. Burnet. I make no doubt of it, Sir, as to the Assassination.

Mr. Att. Gen. My Lord (to *Dr. Burnet*), Why do you lift up your hands? you don't do well; for it is a very proper question.

L. C. J. Well call your next Witness Gentlemen?

Mr. Thompson. Swear *Mr. Gishorne* (which was done)

Mr. Williams. Pray Sir, will you acquaint the Court and the Jury what you have heard my Lord *Howard* say about the late Conspiracy?

Mr. Gishorne. My Lord only said he knew nothing of the Plot; that is all I can say.

Mr. Williams. When was this?

Mr. Gishorne. The *Saturday* before he was taken into Custody; then it was that your honour did say so, my Lord.

Mr. Att. Gen. Ay, and 100 more I believe would say so, that might be concerned in it for all that.

Mr. Williams. Swear *Mr. Blake* (which was done) Pray acquaint my Lord and the Jury, what discourse you had with my Lord *Howard* about his Pardon, and what he said to you?

Mr. Blake. My Lord, About the Month of *October* last my Lord *Howard* sent to me to know how I did, and desired me to come and make him a Visit. The next day I went and waited upon my Lord at his Lodging at *White-hall*, and after the Complements passed, my Lord began a discourse of the Plot, and I told him, That I heard none of the Witnesses had their Pardons, but only *Keiling* the first discoverer. My Lord told me no, but he had a Warrant for his Pardon, and with that he plac'd it out and shewed it me, and I read it. And then I told him I thought

thought it was of no avail without he had his Pardon actually under Seal. He said no, but he had their word and honour; But, said he, when I first received the Warrant, they said I should not meddle in it till I heard from them again; which I have not yet, and I ascribe it to no other reason but only this, That I must not have it till the drudgery of swearing is over. Mr. Williams. When was this?

Mr. Blake. In October last some time. So I then took my leave of my Lord, and my Lord desired me to come and see him at Night about 6 a Clock in the Evening, for he had a great many came to him, but then he should be at leisure, and had many things to say to me.

Mr. Att. Gen. At that time did my Lord express himself as discontented, and that it was irksome to him to be brought as a Witnells?

Mr. Blake. He only said those words that I have told you, and looked up and turned up his eyes towards Heaven when he said so.

Mr. Williams. Pray where is Mr. Benjamin Mercer? Sware him. (who was sworn)

L. C. J. What do you ask him?

Mr. Williams. We bring him to prove that my Lord Anglesey was served with a Subpoena, but is so ill of the Gout he can't come.

L. C. J. If that be all, there is no question of it, but that he was Subpoened.

Mr. Williams. If your Lordship please, We will prove in what condition my Lord Anglesey is, and then we hope your Lordship will give us leave to prove what my Lord has said concerning my Lord Howard's discourses with him.

L. C. J. No certainly, Mr. Williams, and I am sure you ask it not as expecting it should be granted.

Mr. Williams. I lay it before your Lordship and the Court.

L. C. J. Ay, you lay it before us, but you are a Lawyer, do you your self think fit it should be done? Mr. Williams. My Lord, I must submit it to you.

L. C. J. Come, will you consent, that what the Duke of Monmouth has said, shall be given in Evidence, and then I presume the King's Council will consent to your request.

Mr. Williams. I consent? Here is my Clyent, My Lord, in Court, I can consent to nothing.

L. C. J. But if so be there be leave given on one side to tell what another person has said, why should not it be consented to on the other side, that it be proved what a 3d person that is absent has said for them?

Mr. Recorder. Ay, will you consent that we prove what the Duke of Monmouth has said? Mr. Williams. We don't know what the Duke of Monmouth has said.

L. C. J. But you do know 'tis not Evidence, nor fit to be granted what you ask.

Mr. Jones. You know that 'tis not for your purpose what he has said.

Mr. Williams. My Lord, We must go according to our Instructions.

L. C. J. But you know the Law, why should you offer any such thing? your offering it will make the Lay gens that know not the Law, think that the Court put hardships upon people, in denying things which you that understand the Law know can't be granted. Mr. Williams. I do not press it my Lord, but leave it with you.

L. C. J. Why do you spend our time in urging things that are nothing to the purpose, and cannot be allowed?

Mr. Williams. Now my Lord, We will go on to another part of our defence, and that is, to call Witnells to the Reputation of Mr. Hambden, and his behaviour, to satisfy you, that he cannot be such a person as the Indictment says; and as he must be if it be true what this Gentleman my Lord Howard has sworn.

Mr. Thompson. We will first examine my Lord Pager. (who stood up)

Mr. Williams. My Lord, We ask you to that question. Have you known this Gentleman Mr. Hambden, and what a sort of a man is he?

Lord Pager. I have good reason to know him. I have known him a great while, and have always believed him an Honest and a Prudent man, a man of Honor and Vertue, and Integrity, my Lord; and I have had no reason to have other Opinion of him. I know he has been always ever since he came abroad into the World a man that hath loved his Study, and Books and a contemplative life. And therefore I should not be apt to believe, That he could apply himself to a thing so contrary to his own nature, and to that way that he delighted in, and had always hitherto

hitherto applied himself unto, I mean to ingage in a design of so much Malice and Wickedness.

Mr. Williams. My Lord, You have had a long Conversation with the knowledge of *Mr. Hambden*, you say. What say you as to his Disposition; Because this Indictment says he is a Person of a Turbulent, Factionous, Seditious Spirit?

Lord Paget. I have always known him a quiet peaceable man, not meddling in Business, very Friendly, free from all Turbulency, not of much acquaintance nor desirous to make much.

Mr. Att. Gen. Pray my Lord *Paget*, upon the same Oath you have taken, have you not at any time heard him express dissatisfaction as to the Male-administration of the Government? *Lord Paget.* No, never to me in the least.

Mr. Att. Gen. Not at the time of the last *Westminster* Parliament?

Lord Paget. No, I never heard him then, nor at any time else.

Mr. Williams. *Mr. Hambden* was then in *France*, and not in that Parliament, tho he was a Member. Where is *Mr. Pelham*?

L. C. J. Here he is. He sits down here (pointing to the Table) What would you ask him? (He was Sworn)

Mr. Williams. Sir, Will you please to acquaint the Court, what acquaintance you have had with *Mr. Hambden*, and how long? And what you know of him?

L. C. J. You hear the Question, Sir, how long have you been acquainted with *Mr. Hambden*?

Mr. Pelham. I have been acquainted with *Mr. Hambden* about five or six Years living near him, and all that I could observe from him was, that he was a man much addicted to his Studies, kept much at home, and I never observed that he had much acquaintance, but as to the business before you, I know nothing of it, nor ever heard him speak any thing relating to it.

Mr. Williams. As to his Spirit and Disposition, is he a Turbulent Man?

Mr. Pelham. No, I never found him any thing like it. We never talked together of matters of that nature.

Mr. Att. Gen. Were you ever in his Company at any time when he discoursed about Government?

Mr. Pelham. No, I was never with him at any time when he discoursed of any such thing. *Mr. Williams.* Sir *Henry Hobart*.

Mr. Att. Gen. My Lord, We oppose his being a Witness. He is one of his Bail.

Mr. Williams. That was upon the *Habeas Corpus* Act, not upon this Indictment.

Mr. Att. Gen. If he be Bail for the Defendant, my Lord, he cannot be a Witness.

Mr. Williams. I appeal to the Rule of Court, whether he was not Bail upon the *Habeas Corpus* Act only?

Mr. Att. Gen. Appeal where you will, the Bail cannot be a Witness.

Mr. Williams. We moved for an *Habeas Corpus* the beginning of last Term upon the late Act for *Habeas Corpus*'s. And then at the last day of the Term upon *Habeas Corpus* he was brought up thither, and was Bailed upon that Writ.

Mr. Att. Gen. Are not you one of the Bail, Sir *Henry Hobart*?

Sir Henry Hobart. I was one of his Bail, I think it was for his appearance.

L. C. J. If he be one of his Bail that he shall appear in this Court the first day of this Term, and so from day to day till he shall be discharged, and remains under that Recognizance, then in any Case against him, he cannot be a Witness for him.

Mr. Att. Gen. But they mistake the matter, He was then charged with this Indictment, He then Pleaded to it, and was Bailed to answer the Indictment; and surely in that case he can never be a Witness.

L. C. J. That is certainly very true, and you know the Law so well *Mr. Williams* that I wonder you will insist of it; in every ordinary Case it is every days practice to deny the Bail to be Witnesses.

Mr. Att. Gen. Here is the person principal, will they render him in Custody?

L. C. J. Ay, what say you, will you render him in custody? Then we will discharge the Bail. *Mr. Williams.* My Lord, I will tell you what we will do.

L. C. J. Tell me what you will do! answer my question, will you render him in Custody?

Mr. Williams. We will change the Bail, My Lord, and find some other sufficient

sufficient Person to stand in *Sr. Henry Hobart's* place, rather then lose our Witnēss.

L. Ch. Just. With all my Heart.

Mr. Williams. Here is *Mr. Ashhurst*, my Lord; a Gentleman of very good value.

L. J. C. But you must render him first, and change the whole Bail. They must enter into new Recognizances.

Mr. Will. I can't tell whether we can do that so very well, because the others I am afraid are not all herē. He is a mighty material Witnēss I am sure.

Mr. Att. Gen. My Lord, *Mr. Williams* says he is a material Witnēss, let him be sworn, I am so fair, I'll consent to it: Let us hear what he can say. (Which was done.)

Mr. Will. We thank you *Mr. Attorney.* I am afraid you won't live long, you are so good natured.

L. C. J. But you are like to live for your good Nature, *Mr. Williams.*

Mr. Thompson. *Sir Henry Hobart*, How long have you been acquainted with this Gentleman, *Mr. Hambden*?

Sir H. Hobart. I have known him any time these Ten years.

Mr. Williams. How has he been, Sir, as to his Disposition and Spirit? Did you ever find him to be of a turbulent temper?

Sir H. Hobart. Very far from it always.

Mr. Will. Have you had any intimate conversation with him?

Sir H. Hobart. I have known him all along, I say, these Ten years, but of late, I have had more converse with him some few years in Travel.

Mr. Will. Had you much conversation, Sir.

Sir H. Hobart. I was with him continually at *Paris*, and abroad.

Mr. Will. What say you as to his Loyalty and Principles? Was he a Factious, Seditious Person?

Sir H. Hobart. Sir, He always expressed a great esteem for the Government, and great respect and duty to the King.

Mr. Will. Pray Sir, when went *Mr. Hambden* abroad to go into *France*?

Sir H. Hobart. He went into *France* for his Health about *November*, (80.) I think it was.

Mr. Will. How long did he continue abroad, *Sir Henry*?

Sir H. Hobart. I found him in *Paris* the *May* after.

Mr. Will. How long did you tarry there, Sir, your self?

Sir H. Hobart. I went from *Paris* in *June*, and came back again to *Paris* about *October*, or *November* the same Year, and I found him in *France* still.

Mr. Will. And when do you take it, he returned into *England*.

Sir H. Hobart. I was with him till he came over, which was about *September*, (82.) I think.

Mr. Thompson. What do you know, Sir, of his intentions to go again beyond Sea?

Sir H. Hobart. When, Sir, do you mean?

Mr. Thompson. Since that time he came over, you say in *September*, (82.)

Sir H. Hobart. He told me of it often, I think it was about *March*, more particularly once at his own house.

Mr. Thompson. What *March*, Sir? *Sir H. Ho. March* (83.)

Mr. Thompson. That is last *March*.

Sir H. Hobart. Yes, last *March*, he talked of it several times particularly, once I went about some business of my own, and then he discours'd a great deal of his going over with my Lord *Mountague*, that now is; for he told me his health was not yet established, for he came over out of an hot Country in *Autumn* and had been all the Winter in this colder Country, and the Air he found had impaired his health again. And it was not only what he told me, but I had a Letter from a Friend of mine in *France* to whom I had sent to desire him to come over; but he writ me word, no, *Mr. Hambden* was coming over again, and he would not come back yet.

Mr. Att. Gen. Did he tell you when he intended to go over, *Sir Henry*?

Sir H. Hobart. As soon as *Mr. Mountague*, my Lord *Mountague* that now is; could get ready who was to carry his Lady over with him.

Mr. Will. Sir, Do you know of any preparation made by *Mr. Hambden* for it?

Sir H. Hobart. He had resolv'd to take his Lady with him, because *Mr. Mountague's* Lady went, and so I believe did prepare accordingly.

Mr. Att. Gen. Did *Mr. Mountague* go over?

Sir H. Hobart. He did not go then, but since he is gone.

Mr. Att. Gen. Were you in *France* then at this time?

Sir H. Ho. This was in *England* at his own house.

Mr. Will. Pray, Sir, what is his Disposition?

Sir H. Hobart. He was always inclined to a studious Life, and kept very little Company.

Mr. Att. Gen. Was this in *March*, 83?

Sir H. Hobart. Yes, he came over in *September* before. I always observed him to be of a retired temper.

Mr. Att. Gen. You say in 1680. he went into *France*, and in (82) he came over again?

Sir H. Hobart. Yes.

Mr. Att. Gen. Pray, *Sir Henry*, since you convers'd so much with him; Have you heard him since the last Parliament at *Westminster*, or at any time have you been by, when he hath discours'd his Opinion about Government.

Sir H. Hobart. Truly, Sir, I don't take my self to be capable of discoursing with him about any such matters.

Mr. Att. Gen. Have you heard him at any time complain of the Male Administration of the Government? *Sir H. Ho.* No, Sir.

Mr. Att. Gen. Have you never heard any such thing from him?

Sir H. Hobart. No, never.

Mr. Will. Swear *Dr. Lupee*.——My Lord, We must desire an Interpreter, for the *Dr.* Speaks *French* only. * *L. C. Just.* Swear an Interpreter.

Mr. Will. *Dr. Burnet*, or if he be gone, call *Sir Henry Ho.* again. We must beg the favor of you, *Sir Henry* to be an Interpreter, you understand the *French* Tongue very well.

Sir H. Ho. I will do it with all my Heart, Sir, as well as I can.

L. C. Just. Swear him.

Then the Dr. was sworn, and the Oath repeated to him by Sir H. H. in French.

Crier. You shall well, and truly, Interpret between the Court and the Witness, and the Witness and the Court according, to the best of your skill and knowledge: So help you God.

Mr. Thompson. *Sir Henry*, Will you please to repeat what Questions we shall ask, and what Answers he makes?

Sir H. Ho. Yes, Sir, as well as I can, I will.

Mr. Will. Pray, Sir, ask the *Dr.* this Question, If he be acquainted with *Mr. Hambden*?

Sir H. Ho. Yes, he says very well. He lived near two years with him.

Mr. Thompson. How long is it since? *Sir H. Ho.* Four years since he says.

Mr. Will. Pray in that time, What was his Disposition? Was he a Seditious and Turbulent Man? Or was he a studious retired Man, or What?

Sir H. Ho. He says the two years he lived with *Mr. Hambden*, he kept him Company in his Studys, and all that time he found he had no other inclinations but for study and knowledge, and his inclinations were very Vertuous. He always observed in his Discourse a great submission, and respect that he had for the Laws of his Nation and his Prince, and to that degree he was a faithful Subject to the King, that once he told him in discoursing with him of the late Popish Plot, that he was ready to Sacrifice his Life and Fortune for the King's service.

Mr. Thomp.

Mr. Thomp. Ask him what discourse he had with him of the Plot since it brake out?

L. C. Just. Will that be any evidence do you think, *Mr. Thompson*? Will *Mr. Hambden's* declaration be any evidence, he being a Person accused? Do you think he would tell the Doctor, or any Body else that he was Guilty, when he was like to be questioned? That would have been a wise business indeed. You say, he was a very studious Man, and a learned Man, truly if he had done that, he had bestow'd his time in Learning to very good purpose.

Mr. Will. My Lord, That; that we would ask him is this; This Person the Doctor being discoursing with *Mr. Hambden* upon the discovery of the late Conspiracy, and of the dangerousness of the time, he would have advised *Mr. Hambden* to have gone; no, he said; he would not, for he was an innocent Man, and would not stir.

L. C. J. Well, ask him what you will, but his declaration of his own Innocence cannot be taken for Evidence.

Sir H. Ho. He says, since this Plot was discovered, he was going one Day to visit *Mr. Hambden*, and going through long Acre he met a *French Minister*, a *Savoyard Minister*, — But, my Lord he speaks so fast, and goes on with so much at a time, that I cannot remember it all.

Mr. Will. Well, what said that Minister to him?

Sir H. Ho. He says this Minister asked him, if *Mr. Hambden* was not concerned in the Plot, and upon that he went and told him what the Minister had said to him — He says, he told *Mr. Hambden*, that the Duke of *Monmouth*, and my Lord *Gray* were hid — He says, upon that *Mr. Hambden* said to him, I will never fly, nor conceal my self, for my Conscience reproaches me in nothing.

L. C. J. Ask him why does he think the *French Minister*, the *Savoyard* as he calls him, should ask whether *Mr. Hambden* were in the Plot?

Sir H. Ho. He says *Mr. Hambden* said he would rather die innocent then fly with the imputation of guilt upon him.

L. C. J. But ask him the Question I put, Why should that *Savoyard* Parson say so? what reason had he to think *Mr. Hambden* was in the Plot?

Sir H. Ho. He says the Minister did ask him, but he can't tell what Reason he had to think so.

Mr. Att. Gen. Pray, *Sir Henry*, ask him this Question; How long ago it was since he left him? *Sir H. Ho.* Four year he says.

Mr. Att. Gen. Where was it in *England* or *France*?

Sir H. Ho. Whilst he lived in *Bloomsbury*, he says.

Mr. Will. Call *Dr. Needham* and *Monseieur Justell*, (who appeared and *Monseieur Justell* was sworn. Pray, *Sir H. Hobart* will you ask *Monseieur Justell* who speaks *French* too: If he know any thing of *Mr. Hambden's* Resolution to Travel with *Mr. Mountague* into *France*?

Sir H. Ho. He says, Yes. He did tell him he was going into *France*, and he offered to carry some Books for him along with him.

Mr. Will. What Company was he to go in, and what time?

Sir H. Ho. He says, Sir, he can't be exact to the Month when *Mr. Hambden* spake of going over, but he says it was a great while before this Plot came to be discovered.

Mr. Will. Was it some Months before?

Sir H. Ho. It was a Month before it was known he says.

Mr. Will. In what Company was he to go?

Sir H. Ho. He said he was to go with *Mr. Mountague*.

Mr. Conyers. Pray, Sir, Will you ask him, Was he employ'd to get any *French* Servants to be with him? *Sir H. Hobart.* Yes, he says.

L. C. J. Ay, but what was the Question; for there is such a crowd of People before the Council that the Court cannot hear *Mr. Conyer's* Question.

Mr. Con-

The Tryal of John Hambden, Esq;

Mr. Con. My Lord, I asked him, Whether he was employ'd to get any French Servants to be with Mr. Hambden. Sir H. H. Yes, he says.

L. C. J. Well there is Dr. Needham, What do you ask him?

Then Doctor
Needham was
sworn.

Mr. Will. We call Dr. Needham for this purpose my Lord, to prove that these Gentlemen that are accused, Mr. Hambden, and my Lord of Essex, and the others, had very little esteem, and mean Opinion of my Lord Howard. And how one, they so little esteemed should be let into so great a secret, will be very strange to imagine. Dr. Needham, Pray, what can you say of any of these Gentlemens Opinions of my Lord Howard? What Opinion had my Lord of Essex of him?

L. C. J. Is my Lord of Essex now before us? What is that to this Case, Mr. Williams? Let my Lord of Essex have what Opinion he would of him; How does that concern the Defendant?

Mr. Will. I tell you why, I offer it my Lord.——

L. C. J. But pray, offer what is evidence, and keep to the business before you.

Mr. Will. *Falsus in uno, falsus in omnibus*. If we can prove that, what he hath said of my Lord of Essex is false, he is not to be believed against the Defendant.

Mr. Att. Gen. Ay, but upon the evidence of my Lord Howard, all the rest were convicted.

Mr. Will. I offer it only upon what is here to day before you. He says, my Client, and my Lord of Essex were confederate with him upon such a design. Now if my Lord of Essex was not there, then he is false in that, and that he was not, we offer this as evidence,——

L. C. J. But 'tis not a proper Evidence in this Case.

Mr. Will. 'Tis a sort of evidence.——

L. C. J. Ay, 'tis a sort of evidence, but 'tis not to be allowed. If you will prove Mr. Hambden's Opinion you may, but you must not for him bring proof of what my Lord of Essex, a Third Person, thought of my Lord Howard.

Mr. Will. I only offer it thus——

L. C. J. Offer what is Evidence Man! You are a Practiser, and know what is Evidence, but you have offered two or three things to-day, that I know you do at the same time know is not evidence, and I speak it that it may not be thought we deny you, you or your Client any thing that is according to the course of Law. You that know the Law, know 'tis so as we say. Mr. Attorney has gratified you in waving three or four things already, but nothing will satisfy unless we break the course of other Tryals.

Mr. Will. My Lord, What I take not to be Evidence. I do not offer, and where the Court over-rules me, I have not insisted upon it.

L. C. Just. No!

Mr. Will. No, my Lord.

L. C. J. But you would have insisted upon it, if Mr. Attorney would have been so easy as to consent, and the Court would have let you. Pray keep to the Business, and the methods of Law; you know the Law very well.

Mr. Will. My Lord, I humbly apprehend this may be Evidence, and I lay it before you. My Lord Howard has proved that my Lord of Essex, and Five more, of which Mr. Hambden was one, met and consulted about such matters. We may I hope be admitted to prove, That my Lord of Essex was not there; for if we can take off his positive proof, as to any one of the Circumstances, we take off from the Truth of the Fact. If all the Persons were not there; then my Lord Howard is mistaken in that, and accordingly must not be believed in the rest; Therefore my Lord, I press it no otherwise: He hath proved these Six Persons were there, I offer this as some Evidence, That it is unlikely it should be so, because my Lord of Essex had so little Opinion of my Lord Howard, that he would never consult with him about any matter.

L. C. J. Then

L. C. J. Then certainly my Lord *Howard* is to be believed to all intents and purposes, for here is a Record of the Conviction of my Lord *Ruffel*, and of Colonel *Sidney* and all upon the Testimony of this Gentleman my Lord *Howard*, and is not that more to support his credit then a flying Report of a third Persons Opinion of him. And yet after all we say 'tis no Evidence against Mr. *Hambden*, and has been waved by Mr. *Attorney*.

Mr. *Will*. Then I will not press it, my Lord.

Mr. *J. Withins*. It is no evidence certainly, Mr. *Williams*.

L. C. J. It seems my Lord of *Essex* had such an Opinion of my Lord *Howard's* Evidence, That he thought fit to cut his own Throat rather than abide the Tryal.

Mr. *Will*. Call Mr. *Murray*.

L. C. J. Suppose my Lord of *Essex* had said, That he was out of the Plot, and Mr. *Hambden* was in, would that have been good Evidence against Mr. *Hambden* do you think? Pray mind what is the business before you?

Mr. *Will*. Swear Mr. *Murray*. (Which was done.)

L. C. J. Well, what do you ask this Man?

Mr. *Will*. My Lord, We call him as to what I opened of my Lord *Howard's* Opinion of the World to come, and rewards, and punishments there.

L. C. J. Mr. *Will*. Pray take notice of this, Private discourses that People can't come to make answer unto, because they can't imagine to have them objected, are a very odd sort of an Evidence.

Mr. *Will*. Therefore I opened it warily and tenderly my Lord, the Witness will tell you the story better than I.

L. C. J. I cannot tell what Mr. *Williams* has said, or I have said in heat of talk or vanity. God knows how often all of us have taken the great Name of God in vain: Or have said more than becomes us, and talked of things that we should not do.

Mr. *Att. Gen*. My Lord, how can my Lord *Howard* be prepared to give any answer to this?

L. How. My Lord, This presses hard upon my Reputation my Lord. I profess before God I do not know this fellow, I never saw him in my Life before as I know: But a Company of impudent fellows take the liberty of saying what they please.

L. C. J. To rake into the whole course of a Man's life is very hard.

L. How. I would fain have these fellows dare to say this any where else of me!

Mr. *Will*. Well my Lord, we will wave it.

L. C. J. They do not think it a fit thing to press it.

L. How. But my Lord it concerns me in my Reputation; who is this Rascal they bring here? God's life who is he?

L. C. J. We must be tender of Men's reputations, and not let every thing come as evidence when 'tis not fit to be evidence, to put Slurs and Scandals upon Men that they can't be prepared to wipe off. Is he convicted of any crime? If he is you say something, shew the Record of it.

Mr. *J. Withins*. Mr. *Will*. you know the Case adjudged lately in this Court, a Person was indicted of *Forgery* we would not let them give evidence of any other Forgeries, but that for which he was indicted, because we would not suffer any raking into Men's course of life, to pick up evidence that they can't be prepared to answer to.

Mr. *Will*. We have that respect for my Lord's Honour too as not to press it, only we had it in our briefs, and we must go according to our Instructions.

L. How. I desire to know who that Rascal is; What is he? Where does he live? I will make him an Example.

L. C. J. Pray compose your self my Lord, There is nothing of this pressed.

L. How. To say, I am an Atheist my Lord! What can be a greater reflection?

L. C. J. He has not told us any such thing as yet. And we will take care that nothing shall be offered but what is fitting.

L. Ho. I vow to God my Lord, I do not know the Man.

L. C. J. My Lord, Do you think that every thing that a Man speaks at the Bar for his Client, and his Fee, is therefore to be believed, because he said it? No, the Jury are to take nothing here for Evidence to guide them of what the Counsel say, but what is approved. They are to judge *secundum allegata & probata*, that is their duty.

L. Ho. Does that fellow look like a Man of that Figure, That I should say any thing, or have any conversation with him?

L. C. J. My Lord, I don't know what he is. Go on Gent.

Mr. Will. My Lord, VVe have done with our Evidence. If Mr. Attorney will leave it here, we will.

Mr. Att. Gen. My Lord, we won't mistrust the Evidence, nor the Court.

Mr. Hambden. My Lord, I desire to speak a word my self, if you please.

L. C. J. Ay, in God's Name. You, or your Counsel, I will hear all you will say, and as long as you will speak, provided you speak within the bounds of decency.

Mr. Will. My Lord, I think it best to leave it to the Court: VVe hope we have made it clear that our Client is Innocent.

L. C. J. VVould to God you were Innocent, that is the worst wish I wish you, but we will either hear him or you speak, speak as long as you will.

Mr. VVallop. My Lord. I desire to make but one Observation.

L. C. J. Ay, in God's Name make what Observations you will, *Mr. VVallop*, I hindred you from making your Observations at first, because I knew it would be desired after the Evidence was over.

Mr. Att. Gen. Then my Lord, I expect to be heard too. If *Mr. Hambden* makes a Speech, I will reply, or if his Counsel do it, I expect the last word, for I will have neither the Party, nor the Counsel to speak after I have summ'd up the Evidence for the King. *Mr. Hambden*, and his Counsel are all one.

Mr. VVallop. I have but one short Observation to make.

L. C. J. Go on then, *Mr. VVallop*, and say what you will.

Mr. J. VVithins. I think 'tis very fit you should do it of both sides; 'tis a cause of great concernment.

Mr. VWill. My Lord, We will leave it here I think.

L. C. J. Take your own course, Do not say we hinder you of saying what you will for your Client.

Mr. Att. Gen. Let them do what they will.

L. C. J. I'll sit still, make speeches every one of you as long as you will.

Mr. Just. VValcot. 'Tis fit they should speak what they can for the advantage of their Client.

Mr. VWill. My Lord, VVe leave it to the Court.

L. C. J. Gentlemen of the Jury, the Evidence has been something long, and the Counsel both for the King, and for *Mr. Hambden* against whom this Indictment has already been found by the Grand Jury, having left it to the Court to Sum up all, I shall do it as well as I can: And the Question before you Gentlemen is, VVhether the Defendant be guilty of the Offence charged in the Indictment, or not Guilty, and there having been so long an Evidence on the one side, and on the other, it will be fit for me according to the best of my remembrance to help your Memories by recollecting what has been said on both sides which I shall do as near as I can, and if my Brethren will please to supply any thing that shall be omitted by me, may, if the Counsel for the King, or for the Prisoner will put us in mind of any thing that has been spoken, and proved either against, or for the Party indicted,

in God's Name let them have liberty to speak it: For it is sic the Question should be left before you with all fairness, and according to the best of my Observation and Memory thus it stands.

The first thing Gentlemen that is considerable to you, is, that there is such an Indictment as has been already opened unto you, that is preferred against Mr. *Hambden*, that does set forth, that Mr. *Hambden* is a Seditious Person, and a Man according to the Language of the Indictment (which are words of course and form in an Indictment of this Nature) of an evil disposition, designing to disturb and distract the Government, and that he with several other Persons did conspire to Bring in troubles, and perplexities upon the Government; and in order to that, that there were some meetings between him and several other Persons and that there was a design to conciliate some Persons of another Nation to go along with them in their design, particularly some in the Kingdom of *Scotland*. This is the purport in the Indictment, to which the Defendant has pleaded not Guilty.

Gentlemen, The Evidence for the King has been of this sort, they did at the beginning, which yet I must tell you by the way, is not any thing of Evidence, but the Kings Counsel would make some Overtures to press on their side, as the Defendant, and those that are of Counsel for Mr. *Hambden* have made some little hints to press on their side, that some Witnesses the one and the others would have had here, were *subpœna'd* but could not be here. It seems by the proof, Here was a meeting, as it was between Six several Persons, and they Name them, the Duke of *Monmouth* was one, the Lord *Howard* another, the Lord *Russel* a Third, the Earl of *Essex* a Fourth, *Algernoon Sidney* a Fifth, and Mr. *Hambden* the Sixth. As for my Lord of *Essex* he is gone to his long home, my Lord *Russel*, and Mr. *Sidney* have received Sentence, and been executed. So there remains Three Surviving, and say they that are for the King: We produce my Lord *Howard*, and we have taken care to Summon the Duke of *Monmouth* by leaving *Subpœnas*, where it could be thought he was to be met with, with Promises of his Servants to deliver them to him in order to have the Duke to be a Witness for the King this Day. I presume the meaning is, They would infer from that, that they would give an account of the fairness of this proceeding, tho it has been a matter that has obtained a sort of belief in the World, as tho the Duke of *Monmouth* had denied, that there was any such thing as this Confederacy and Conspiracy: And that has given People occasion to be of very different Opinions, and persuasions about the matter; but say they, to shew we are not afraid to have the Truth come out, we have done as much as in us lay to get this Person hither: Therefore we have left *Subpœnas* at his Houses, at his Lodging with his Servants, and they have promised to take care they should be delivered to him, and he is not come. Against this on the other side, say they, for the Defendant, VVe have taken all the care we could to bring my Lord *Anglesey*, who was to have been a VVitnes for the advantage of the Person indicted, but my Lord *Anglesey* is at present afflicted with a fit of the Gout, and for that very reason we can't have him here. And so they shew, that they have been very zealous to get VVitneses on their side to vindicate their Reputation, but they did not meet with that effect that they desired. These two things Gentlemen are matters that are used both against him one way, and for him another.

But now to come home to the Evidence upon which this matter is to turn, and here you are to consider, that whatsoever has been said or offered by the Kings Counsel on the one side, or the Counsel for the Defendant on the other side, (I call him so, for 'tis but a Trespas tho a great one) You must not take into your consideration at all any further then as their Allegations are supported by the Testimony that has been given: And whatsoever the VVitneses have said either for or against him, and out of that Testimony as near as I can remember I will give you the Objections, and their Answers with the Observations, that have been made, or do naturally arise out of the facts in proof.

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My Lord How. In the first place gives an account of this matter, and Gentlemen the times will be wonderful material, and therefore I begg you would take a Pen, and Ink, and mark these material circumstances as you go. For in all matters of fact positively proved, which also have their Credit supported by circumstances which do accompany them, the Testimonies given of such Facts are to be valued according as those circumstances keep touch with, and humor as I may so say, the Fact that they are to Evidence the truth of.

My Lord How. does therefore in the first place acquaint you, that about *Michaelmas* there was a discourse between him and my Lord of *Shaftesbury*, and that was concerning a rising intended to be had, and he tells you how that my Lord *Shaftesbury* was fully resolved upon it; That things at length came to that pass, That he was forced to go from his own house, as he said, being disappointed by the Duke of *Monmouth* and others who had promised to joyn with him, and was retired to the house of one *Watson* in or near *Woodstreet*. But he understanding where he was, my Lord How. went to him, (I think he says my Lord *Shaftesbury* sent to him) when he came, my Lord *Shaftesbury* told him, That altho there had been such a disappointment by those Persons he named, yet that did not take off his edge, but he was resolved to go on himself, nay tho his body was infirm, yet he would be set on horse-back, tho he was lifted up to appear in the head of a party that he had prepared, and were ready when he would call them. And he began then to reflect upon the disappointment of the Duke of *Monmouth*, and as tho the Duke of *Monmouth* had only a prospect to advance himself, and had only an Eye upon his own particular Interest. That he so managed matters as if he design'd to have the sole disposition of all things whatsoever, and began to be uneasy with the Duke of *Monmouth*. My Lord How. did endeavour to have prevailed with my Lord of *Shaftesbury* for a reconciliation between the Duke of *Monmouth* and him, it being a matter that required so much safety and security, and did desire him that he would have some intercourse with the Duke of *Monmouth* in order to conciliate a friendship between them, that they might go hand in hand. You find he was under some difficulties about this matter, he was not able to bring the thing about; for after he had spake with the Duke of *Monmouth*, and prevailed with him, my Lord of *Shaftesbury* was peevish, and talked at a distance, and when he had appointed a meeting one time, it was prevented, my Lord *Shaftesbury* went away into *Holland*, and there died in *Holland*. This is the substance of what my Lord How. says as to that matter.

But Gentlemen this is material, and Ile tell you why I think it material; because the Counsel for the Defendant have made it an Objection particularly to my Lord *Howards* testimony, That my Lord *Howard* is particular as to the day after *Michaelmas* day, but he is not so particular when he comes to speak of other times upon which the true Question before you depends. For now he speaks more generally as to the meetings at the Defendants, and my Lord *Russells*, that they were about the middle of *Janu.* and the beginning of *Febru.* and is not particular as to the day. I speak of this because that has been made use of as an Objection against my Lord *Howards* testimony. And I will tell you as near as I can all the Objections that have been made against this Testimony after such time as I have settled it and laid before you what the whole of it amounts to.

Then comes my Lord *Howard* and says, that meeting with the Duke of *Monmouth* some time after this they began to talk together, and they thought that tho the business had failed in the managery of my Lord of *Shaftesbury* yet it was fit there should be a reassuming of the business again, but in order to settle matters that things might not go inconsiderately on, it was thought fit that they should resolve themselves into a certain number that were confident one of another, in order to Steer and Transact these matters the better among themselves. And they must be persons fit to be trusted and for whom there should be an undertaking among them for their Faithfulness and Integrity; for all Persons are not fit to be trusted, but only such as they agreed upon. The Duke of *Monmouth* he undertook for my Lord of *Essex* and my Lord *Russell*, those were the Persons for whom he would ingage, as likewise for my Lord *Salisbury*. And then they began to talk of some more, particularly of Mr. *Sidney*, but he was a Cynical man, and a Philosopher, and they were first to come to him, and to treat with him in another manner then the rest. He was not to appear as the Duke of *Monmouth*, but to take him in his retirement and privacys, and then they might be the better able to break the matter to him. And he says accordingly there was a time designed

designed on purpose; and at that same time the Duke of *Monmouth* and my Lord *Howard* did go and attack Mr. *Sidney*, they found him on a private day, and Dined with him; and upon that Dinner the whole matter was broke up, and put into some Method; Then was the whole Design contrived as to the Persons that were to be ingaged in this Matter; and he says, They agreed upon Six. The Duke of *Monmouth* undertook for my Lord of *Essex*, and my Lord *Russel* and Col. *Sidney* undertook for Mr. *Hambden*. He speaks of my Lord of *Salisbury*, but my Lord of *Salisbury* was never there among them, and so I put him out of the Case, I quit him from being of their Number, because there was but Six in all, my Lord of *Essex*, and my Lord *Russel*, who were undertaken for by the Duke of *Monmouth*, Mr. *Hambden* undertaken for by Mr. *Sidney*, and my Lord *Howard*; for by that time Mr. *Hambden* was come into the Matter upon Col. *Sidney's* undertaking.

Now we are got, Gent. by these steps till we come about the middle of *January*; but says my Lord *Howard*, I cannot positively say, it was this day, or that day of the Month; but being about the middle of *January*, I conjecture it was about the 14th, but he is not positive to the day. He says, accordingly they went to Mr. *Hambden's* House, which was the place first design'd for them to meet in. He says, there accordingly they did all Six meet; and that it being Mr. *Hambden's* House, they thought it most proper for him who was Master of the House, who usually bids his Guests welcome, to break silence, and to impart the business of the Design they met about. He says, accordingly Mr. *Hambden* after the first Complements of Entertainment, did give an account of the business they were come about, and that it was in order to have a Rising. This he says was proposed by Mr. *Hambden*. He tells you, then they fell into Debate about the time when, concerning Men, and Arms, and Money; and likewise concerning the Places. He tells you, the Places wherein the Rising was design'd to be, were *Devonshire*, *Cheshire*, *Somersetshire*, and other places, that is, as to the Circumstance of the Place. Then he tells you concerning the time; it was Debated, Whether it should be all at one time, or at several times? Whether they should onely begin here, and the Country fall in, or all at once? That likewise they had in consideration the business of Money, and that his Grace the Duke of *Monmouth* did speak of 30 or 35 Thousand Pounds, or some such Sum at that time. But then, as was natural for men of Deliberation and Consideration to consult about, they took into Debate, that they might not go headlong, to endeavour to conciliate another Party to chime in, as he says, along with them, in the business they were going about, and accordingly it was thought fit, and proposed, That there should be an endeavour to conciliate a friendship with some Persons in *Scotland*, to fall in with them; and then he tells you, who the Persons were, that were named: Some of the Names he remembers, and others he has forgot; he speaks particularly of the *Cambeler*, Sir *John Cockram*, and my Lord *Melvin*: and he says, other persons were mentioned, but he can't remember their Names: and my Lord *Russel* knew some of these persons, and the Duke of *Monmouth* knew some others of them, because of his near Relation to the Earl of *Argyle*, the person that you know was proscrib'd for Treason in the Kingdom of *Scotland*. He says, that so far the debate of this Matter went, that they

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though

thought fit a Messenger should be provided, a Trusty man to be sent into *Scotland* to Treat with these *Gentlemen* about this Matter; and my Lord *Russel*, I think he says, undertook to write a Letter to be carryed by this Messenger to these *Scotch* Gentlemen.

He says, pursuant to this Consultation at Mr. *Hambdens*, a Fortnight after, or thereabouts, which brings it up to the beginning of *February*, then was the Meeting at my Lord *Russel's* House, and there they Debated these Matters over again, and the whole managery of sending a Messenger into *Scotland*, was left to the discretion of Col. *Sidney*, and he undertook that Work, that was his Post that he was to manage: and he does say, That he does very well remember, That *Aaron Smith* was the person proposed then; and tho he was unknown to some of the Company, yet he was well known to others; and by reason of that knowledge that others had of him, they looked upon him as a person very fit, and every way qualify'd for it.

So that Gentlemen, here is proved a Consultation in order to the Raising of Men to Infest the Government; a discourse concerning Money and Arms for this End, and the Places where, and the time when; and of conciliating a Friendship with some discontented persons in *Scotland*, to joyn, and chime in with these Conspirators in *England*.

And then there is yet another Circumstance very Remarkable, Because tho my Lord spake it not at the same time that he delivered his Testimony, yet upon the Question asked, he gives you a plain account of it; and it has a plain dependance upon what went before. Said they among themselves, 'Tis proper for us, as near as we can, to shut the Door against any Exceptions about these Mens coming to Treat with us; but how shall we get them hither without Suspition? We must have some Shams, or Cant or other, to be a pretence for these People to come into *England*; and that was agreed to be about some Plantation in *Carolina*.

This, he says, was the Result of that Meeting; and that when the Meeting was broke up, about Three or Four Days afterwards, (mind the circumstance of Time, *Gent.* for 'tis very material) Col. *Sidney* and he met together, they went to Col. *Sidney's* House, and there he saw him take Money out of a Till, where there were several hundreds of Guineys, or pieces of Gold; and as he believes, he says, he took Threescore Guineys, or some such Sum; and told him, it was to give to *Aaron Smith* in order to his Journey into *Scotland*: That he went out with him in his Coach, but Mr. *Sidney* set him down by the way, and he himself went into *London*, telling him, he went to that purpose, to give *Aaron Smith* the Money. Some time after, about a Week, or a Fortnight, or Ten Days after that, he says, he met with Mr. *Sidney* again; and he says, Mr. *Sidney* gave him an account, That he had heard *Aaron Smith* had been at *Newcastle*, but he had not heard of him since that time, and that is another Circumstance in point of Time, *Gent.* So that you have here a positive Oath made by my Lord *Howard*, that Mr. *Hambden* was privy, and consenting to all these Debates, as to the Raising of Men, and the Levying of Money, and about the

the conciliating a Friendship with these men of *Scotland*, and about sending a Messenger into *Scotland* to that purpose. And if my Lord *Howard* do Swear true, no man living can doubt but that Mr. *Hambden* is guilty of this Indictment. The first meeting was at his House, and there he did take notice of what had been formerly done, and proposed the things, breaking the silence, and entering into the Debate; which shews that he had been discoursing about it before, and had it in his thoughts before, or else he could not have propounded it as the end of their meeting.

Now this, Gentlemen, Here is a positive Fact; and as Mr. *Williams* says true, no man living can give any Answer to a positive Fact, but by some other things that may be Circumstances to oppose that Fact. Now he says, there are no Circumstances that have been proved, that will give any Credibility to what has been deposed, besides the positive Oath of my Lord *Howard*. So that, says He, your Fact, tho it be positively Sworn, is not supported by any Circumstances of the Fact, that may give Credibility to it. And he objects very materially; for if it be not supported by credible Circumstances, then indeed it would be less material; yet I cannot say, it would not be at all material; it is material, and you are to determine, whether you have sufficient Evidence given you, to induce you to believe, That my Lord *Howard* is at this time Guilty of wilful and malicious Perjury; for it is Perjury, and that in the highest degree, if it be not true that he says; and God deliver all Mankind from being Guilty of any such thing. I leave that to your Conscience, Gentlemen, who are the Judges of it.

But says the Kings Council, Here are Circumstances that do support our Fact, and the Credibility of it. For first, here is the Circumstance of *Aaron Smith*, who was sent into *Scotland* by Mr. *Sydney* in pursuance of this design, and this Circumstance my Lord *Howard* does subjoin to what he has positively affirmed against the Defendant. And this Circumstance is a thing that may be helped by other proof; and what is this Circumstance? Say they, That *Aaron Smith* was sent into *Scotland*; and in order to prove that, they have called one Sheriff, who is a man that keeps an Inn at the Posthouse in *New-Castle*, from whence Col. *Sidney* told my Lord *Howard*, he had notice of his arrival at *New-Castle*, but had heard no more of him after that. And this Sheriff Swears directly, I saw that man they call *Aaron Smith*, when he was shewn to me before the King and the Council; and Mr. *Atterbury* Swears he shew'd *Aaron Smith* to him, and then Sheriff swears that man you shew'd to me, was the Man I saw at my House at *New-Castle*, that chimes in with the Circumstance of Fact that Mr. *Sidney* heard from him at *New-Castle*. And then there is the Circumstance of time when he saw him there; Says he, I saw him the Friday before *Shrove-tuesday*, which they in the North call *Fasters-Even*. He came to my House on *Thursday* night, and went away the next day, *Friday*; and he went with his Guide, the other man, *Northward*, in order to his Journey into *Scotland*, as he himself said. Says he, I remember the time
very

very particularly, it was the *Friday* before *Shrovetuesday* last, this *February* was Twelve-month; and he went yet further; says he, I did not only see him when he went away, but when he came back again, for he left his man at my House all the time, and he tells you what his name was; for he says, *Smith* went under the disguised name of one *Clarke*, and he did then talk of going to the *Western* parts of *Scotland*, he named *Douglas* as he thinks, tho he is not positive in that, but he is in the Person, that was the man. And says he, I sent for this Person, the other fellow *Bell*, and he was the guide he had along with him. And upon *Bells* Examination, What says he? Says he, I remember that man came thither at that time to the other mans House; I take it upon my Oath that is the man, and he went by the name of *Clarke*, he hired me to be his Guide; I went out with him on *Friday* morning, and I went a long with him all that day; but upon *Saturday*, which was the next day, going *Northward* with him, my Horse tired, and failed me. Thereupon I was forced to be left behind, but I overtook him on *Sunday* night following; I overtook him at such a place, and saw him within six Miles of the Borders of *Scotland*. I take it upon my Oath, this is the man that was there under the name of *Clarke*; and at his returning back again, I took notice of him, I went up to him, I drank with him, and we had discourse of our Journey. He told me at first, he was to go to the *West* of *Scotland*, and so he went *Northward*. After that, which was about Ten or Twelve days, he came back again, and so went *Southward* towards *London*. This he doth Swear directly to be at that time.

Now Gentlemen, The time is wonderful material in that Case, because that very time Twelve-month that they talk of, is the beginning of *February*. If you look upon your old Almanack of the last year, (I happen to have one in my Pocket, and look upon it, when the men gave their Testimony) and there you will find that the *Monday* before *Shrovetuesday*, when he says, he left him within six Miles of the Borders of *Scotland*, falls out to be the 19th of *February*; I will look upon it again, lest I should mistake; 'tis just so, and that humors the time that my Lord *Howard* speaks of, which was about the middle of *February*, a few days after, that he says the Money was given by Mr. *Sidney*; and then for the time for *Aaron Smith* to get to *New-Castle*, there is a fit space of time, for it falls out that the *Thursday* that he arrived at *New-Castle*, is the fifteenth day of *February*, and so it falls in well with my Lord *Howards* Testimony, and so the *Monday* that he parted with him at the Borders of *Scotland* was the 19th, which also just humours the time that he speaks of. So that here is a Circumstance of Fact to confirm his Testimony, both as to the sending the Messenger, and the Circumstance of time. That he is the same man, is proved by these two Witnesses, who agree in this, That he was there about such a time; and it does likewise humour that other Circumstance of place that Mr. *Sidney* said he had heard from him from *New-Castle*, but not since; and then there is the other Circumstance, which backs and confirms all, There was not only a sending for these Persons, but there is notice taken that these *Cambeles*, who were to be assisting in this matter, were to come about

about the Sham, and under the disguise of Purchasing Plantations in *Carolina*. About the beginning of *June* they come to Town, the Two *Cambels*, Sir *John Cockram*, and Mr. *Monrow*. Sir *Andrew Foster* he tells you, he met with some of the Men, and they told him, They came about the business of *Carolina*; and so the Cant of *Carolina* is made good in this circumstance that way; but when the Plot brake out, these men sculk, one flies one way, another another; some were taken as they were Escaping away by Water; others of them were taken upon the Bed at Noon-day in *Moor-fields*: Had the business they came over into *England* about, been a fair, and a lawful, and honest Business, why should they hide themselves? Why should any Man sneak and sculk, and be ashamed to own an honest and lawful business? But this does humor and touch the thing exactly, as to that circumstance, That *Carolina* was onely a Cant for to disguise their coming over. These are the onely Two Circumstances that seem to be pretty strong for them, to prove, and support the credibility of what their Witness has sworn.

For, Gentlemen, What a wonderful sort of Expectation would it be, That we shall never Convict a man of High Treason, unless you can bring a man to be a Witness that is not concern'd? for then all these Persons must have been acquitted, for they intrusted none, it seems, but these Six, they took care they would keep it amongst themselves. Do you think they called their Servants to be Witnesses of what they were about? That is a vain and idle imagination? In the *Papish Plot*, what Witnesses of it had you there? Were they strangers to the Plot? No, you cannot Expect any Witnesses but such as the nature of the Case will bear.

This is the meaning of the Evidence that has been given for the King, and it carries a great weight in it. But they have made an Objection, which indeed is not remote, but may concern the Question very much. Say they, If we prove my Lord of *Essex* was not there, or such an one was not there, would it not discredit the Evidence of my Lord *Howard*? Yes, certainly, it would wholly discredit it, and he were not to be believed at all; nay, which is yet nearer to the Question, If Mr. *Hambden*, that had notice all along of the times fixed wherein this Transaction was, to wit, about the middle of *January*, and beginning of *February*. For because they talk of the Prints, Mr. *Hambden* had from them sufficient Notice, and intimation of the Time. If Mr. *Hambden*, that hath had all this Notice, could have proved before you, That he was in *France*, or any other Place at that time, That had been wonderful Material. But all the Circumstances that are any way significant to support the Credit of this Matter, are very well proved; and so the Testimony of my Lord *Howard* is by these concurrent Circumstances of Fact, sufficiently supported.

Now, Gent. I must tell you, This being the Substance of the Evidence for the King; I will now, as near as I can, give you an account of the Evidence for the Defendant; It was opened by Mr. *Williams* very ingeniously for the advantage of his *Clyent*, as every man is bound to say what he can for his *Clyent*. He made a great many Objections against my Lord *Howard*; for if he could but shake the Testimony of my Lord

Howard, then he might easily bring off his *Client*; and if you, upon any thing that has been offered, either in Evidence, or by way of Observation fairly made from the Evidence, do believe my Lord *Howard* has forsworn himself, you must find Mr. *Hambden*, the Defendant, Not Guilty; but if you believe he has not forsworn himself, you must find him Guilty. So all our matter is reduced into a very narrow compass; and therefore I must repeat it again what I said at the beginning, If my Memory do not serve me to recollect all right, the Councel for the Defendant shall have free liberty to inform the Court of what has been omitted.

First, says Mr. *Williams*, My Lord *Howard* was a man very deep in a Conspiracy with my Lord *Shaftsbury*, by his own Acknowledgment, endeavouring to conciliate a friendship between the Duke of *Monmouth* and my Lord *Shaftsbury*; and so he had a great hand in the Plot; and what he might do on purpose to get himself out of danger from that Plot, and procure his Pardon, is not known.

It is a very strange thing, that it should be an Objection before he had his Pardon, That he did it for fear, and to get his Pardon; and when he has it, now the Objection is, Because he has his pardon; and he got it, say they, by this means. It seems, whether he had his Pardon or no, it must be an objection against him: before he had it, he was under the fear of not obtaining it, till the drudgery of Swearing was over: but now he has his Pardon, What now? Why, he does it on purpose to accuse other people. Why, he says no more now, than what he has said before he was Pardoned; and if after he is Pardoned, when he is under no dread or fear because of his Guilt, he says the same things that he did when he might be in fear, How can that be an Objection to him? It cannot be thought he does it to save his own Life, for that is as safe now by his Pardon, as it can any way be; and 'tis, and must be a great satisfaction to his mind, and will be so to any other reasonable mans mind; and is a plain Answer to the Objection of his fear, (for 'tis a captious Age we live in, that will make some specious Objection or other, though it be not of any great weight). But how can it be thought a man would come and Swear too much, or too far, for fear he should not save himself: or as they call it, swear himself into a Pardon, when he has his Pardon? It might be an Objection before; but as long as he is under no such Terrors now, but stands right, both by the Laws of God and Man to be heard as a Witness, I think it would be hard for any to come, and say, *This man would forswear himself*. What should provoke him to come and forswear himself, when he is under no danger as to his own particular? There might be an Umbrage, I say, of an Objection before he had his Pardon, though it was, indeed, no Objection before; not a rational weighty one, to set aside his Testimony. But nobody knows which way in the World to satisfy the Minds of some sort of people.

In the next place, *Gent.* says Mr. *Williams*, You are not positive as to the time; You say, It was about the middle of *January*, and the beginning of *February*, and that is too general and wide; but you remember particularly to a Day the business between you and my Lord of *Shaftsbury*, That, that was the day after *Michaelmas* day: how can you be so particular as to the one, and not as particular as to the other?

Why

Why, I will undertake that Mr. Williams, when he made the Objection, must needs think of the Answer that would be given to it. It is notoriously known, that the Pressures these Gentlemen thought they lay under, were what my Lord of Shafisbury said, *Now they have got the Juries into their own Power, and no man is safe; They will find me or any man Guilty, as they please;* Why, how came they to get Juries into their own hands, but by having the Sheriffs as they would have them? Now the Sheriffs that are to return Juries, are, as all men know that know any thing, Sworn the day before *Michaelmas* day; Therefore he might very well, and had good reason to remember that day; When such a notorious thing happens to fall out at such a notorious time, 'tis easier for a man to remember that time, than to speak to the particular time of an Action done about the middle of a Month, where there is not such a notorious Circumstance. Why, I can tell you very well where I was upon the day before *Michaelmas* day; Upon that day, and the day after; for that very reason, Because it was a notorious day about the Swearing of Sheriffs in *London*. But if you ask me, Where I was the middle of *January*, or the middle of *February*, I cannot so well remember that. But there is Credit to be given to a man that speaks to a notorious Circumstance, and thereby proves the probability of what he says, tho he should not be so particular in a thing that admits not of such a notorious Circumstance.

Gentlemen, I make the Objections as they are stated on the one side, and on the other side; and the Answers, that naturally flow to prove the matters before you one way or other; and you are to judge, you are to weigh them; and which has the greater Credit with you, you are to take notice of.

He does say, in the next place, Here was a discourse of Arms and Armed men, and a great sum of Money spoken of, but there breaks out nothing of this matter till *July* following; but this debate was in *January*, and *February* before. For that matter, the Answer that is given, and it seems to be a plain one, is, That they were to conciliate a Correspondence with people that were abroad, and that they could not go on till they had effected that, and till these people came to joyn with them, which could not be without some time. And you hear the *Cockrams* and the *Cambels* came not to the Town, till *June* or *July*; so that it was not probable it should break out till then, because it was to be agitated upon their coming here. And so that Objection is answered, They did not apprehend any such necessity for present engaging in it. For, my Lord *Howard*, because he thought it would be a work of time to settle the Correspondence, and get these people to Town, went down to his Country house in *Essex*, and from thence to the *Bath*, for he did apprehend some considerable time must be spent ere these people could come; and therefore he thought it convenient to take his retirement in the mean time.

Ay, but 'tis strange, says Mr. Williams, and he makes that another Objection,

Objection; He would have my Lord *Howard* to draw in this Accusation of Mr. *Hambden*, to procure his pardon, by going further than the other Discoverers had gone. It seems, say they, Mr. *Hambden* was not thought of at first; But because *West* and *Keeling* had discovered a Plot, my Lord *Howard*, to secure himself, must go a step further than they, and (as the Defendants Council would have it) than the Truth; and that is the stress of the Objection. But the weight of the proof is quite different; for all men know, In the Plot there were several parts. There was the business of *Keeling* and *West*, and that was the Assassination of the King and the Duke; but the Duke of *Monmouth*, my Lord *Howard*, and those other Gentlemen, were for the business of the Rising, tho that might be in order to that other purpose; but they kept not Company with those that were engaged in that part of the design. They were the Underlings, the Scoundrel Plotters, that were concerned in the Assassination. But these Gentlemen looked upon themselves to be the Privy Councillors, not to be the Executioners; they were to be only Advisers, what was to be done after that other business was over; and their Consultations were for raising of men for an Insurrection; not the business of the Assassination of the King, that was not their Province. Can it then be an Objection against my Lord *Howard*, because he gives a Testimony *West* and *Keeling* could not give? Could they go further then the Killing of the King, which was their business? If any man should have asked my Lord *Howard* about that matter, he would have made Answer, It was not for that purpose that we met together at Mr. *Hambden's*, and my Lord *Russell's*; no, that was upon a particular business, and to a particular end and purpose.

Then he says too, That tho my Lord *Howard* comes here upon his Oath, and declares these several matters that he hath deposed; yet he has given a different account of things elsewhere, and he has called several Witnesses to that purpose. To whom my Lord *Howard* several times, upon his Honour, upon his Word, with Eyes lifted up, and Hands elevated to Heaven, and many extraordinary Protestations, declared, That he knew nothing of the Plot; and say they, If a man will at one time Pawn his Honour, and his Reputation, for the truth of a thing, and after that, will come again to Swear against all that matter, That is an Argument that does sink the Credit and Reputation of that Witness; and thereupon they call you several Witnesses, some whereof are Persons of great Honour and Quality. I think they begin first with *Ducas*, Servant to Col. *Sidney*, and he tells you, After his Master was taken, my Lord *Howard* came thither, and desired he might lye there; and desired the use of some Plate and Goods of Col. *Sidney's*; and then asked, what was become of his Master? And when *Ducas* told him what he heard of the Plot, that something was talked of, about the Assassination of the King and the Duke, my Lord *Howard* lift up his Eyes, and his Hands to Heaven, and declared he knew nothing of it, but he believed Col. *Sidney* was a very honest man, and knew nothing at all of any such matter; and as for himself, rather than he would be taken or confined again, he would do any thing. This was the Evidence they gave as to him. Then they come with Mr. *Howard* their 2d. Witness; for I would take them

them in order as they were produced, and he gives you an account, that he met with my Lord *Howard*, and my Lord *Howard* told him he knew nothing at all of any Plot, and did believe that Col. *Stdney* was innocent, and he did believe likewise that my Lord *Russel* was innocent, and for his part he knew nothing of any such thing as a Plot, but he says when he began to talk to him, why did he make such a Bustle and go so often into the City and concern himself about the making of Sheriffs? he answered, I do nothing but what is in a legal way, and he justified all that was done to be only in a legal way.

When once people come to believe that the raising of Tumults, and making Seditions, Stirs and Noises is a legal way to obtain their ends, as we know 'tis the Tenet and Principle of a great many people, what will they not do under that pretence, That all they do is according to Law? They think it is lawful by the Religion they profess to resist and oppose the Government, and the *old Cause* is a good Cause to this day in some mens Opinion, and they can die in it, and thank God for being concerned in it. And there are some people that say the raising of Arms by the King's Authority against his Person is lawful by the Religion they profess, and they call themselves *Protestants*, (how justly you may imagine) and if men will make Insurrections to difficult the Government, it is Rebellion, and no man can justifie it, let him pretend Conscience or what he will, 'tis rank Treason. It is not saying, I am thus persuaded in my Conscience that will excuse the Man, if I steer my self by the Dictates of a good and regular Conscience, it can never be thought that I shall commit Treason but it is the effect of evil Principles.

Was it not under the shape of Religion, That that blessed Martyr King *Charles* the First of ever blessed memory came to the Block, nay, and I have heard of some men in the late times that were engaged on that side, who finding that the King did prevail at the beginning of the War, because he had Gentlemen of Quality and Spirit to appear for him, were at a loss to know which way in the World they should put a Spirit into the common people to oppose the King; and some among them bid them be sure to put Religion to be but the pretence, and that would make them run headlong to what they would have them. Whose Opinion that was is not strange to any that know any thing of the History of those times. So that when once people take it to be the Principle of their Religion to oppose and resist all that are not of their persuasion, and for Religion sake to resist Authority, then they think all is lawful they can do to preserve their Religion as long as they are wound up to that Opinion.

Their next Witness, Gentlemen, is my Lord of *Clare*, and he gives you an account of his Discourse with my Lord *Howard*. And by the way I must observe what I am very sorry for with all my heart, To hear that among Gentlemen of Quality and Honour Discourses of the Government and the Male-Administration of it as they think should be onely matter of Jest fit for their recreation, and laughter, onely merry Table-talk, as though Government so sacred a thing were as mean as any trivial Concern whatsoever. I am sorry to hear and see that Persons of great Honour and Quality should esteem it so. And I must be pardoned if I take notice of it: for matters of Government and yielding Obedience to Superiours is a matter of Religion, 'tis a serious matter, and every Man ought to make Conscience of it. To talk of Government with Reverence as well as pay Duty and Obedience to it. And when I find it made a Jest I must be permitted to say that is not so well done, and whoever it is that makes it so ought very much to be blamed.

My Lord of *Clare* comes and testifies, That my Lord *Howard* told him, He did not believe my Lord *Russel* was guilty of what he was accused of, much less did he believe it of Col. *Sidney*, and when he began to talk about Writings found in *Sidney's* Closet, he said, there can be nothing of his Writings found that can do him or any Man else any hurt. This is the substance of what that Noble Lord has said.

Then there is my Lord *Paget*, and he likewise gives an account, That he had some Discourse with my Lord *Howard* about the Plot; and he told him too, That he did not believe any thing of this Plot, or that my Lord *Russel* and others accused had any hand in it. But I would observe this one thing upon my Lord *Paget's* testimony, That still my Lord *Howard* was wish'd joy by every body, and I am glad to see your heels at liberty, and the like. So that there was some jealousy of his being concerned; some thing or other there was in it. Says my Lord *Howard*, I look upon my self as affronted that any body should talk so of me. He was concerned that they should suspect him. But something there was at the bottom. Says my Lord *Paget*, I am glad to hear you are out of it. For he began to imagine there must be some fire for all this smoak. That, Gentlemen, was the Discourse he had with him. But he says, That with my Lord *Paget* there were Discourses of his going beyond Sea, but he did not go.

Then comes Dr. *Burnet*, and he tells you, That there were Protestations made to him, and he has got the same words as the *French* Man had, That he did it with lifted up eyes and hands, he professed solemnly he was altogether a stranger to any such thing. The Dr. says, He had heard there was a Plot, and was persuaded of the truth of it, but he was a little shaken by what my Lord *Howard* said to him. But now he is sufficiently satisfied there is a Plot, and I am glad he is, for I think it scarce does remain a doubt with any Men that have any value for the Religion and Government we live under. And I know not how they could be better satisfied than by the Evidence that has been given of it, a main part of which was given by my Lord *Howard*. All this was before my Lord *Howard* was taken.

Then comes in one Mr. *Gisborne*, and he tells you the same Story, That a great while ago my Lord *Howard* told him he knew nothing of the Plot.

The next to him is Mr. *Blake*, and he tells you, That after such time as the Plot was discovered, and after my Lord *Russel* was tryed, and after my Lord *Howard* had given Evidence at the *Old-Baily*, he shew'd him the Warrant for his Pardon, and *Blake* telling him that was not sufficient without an actual Pardon; He replyed, I think in my Conscience I shall not have a Pardon till the drudgery of Swearing is over. But is that any argument? Here is a Man under the drudgery of Swearing; therefore he did not know any such thing as he swears. It carries thus much along with it, That it was uneasie to him, and there is a kind of a force put upon him to swear as they say in order to his Pardon.

But now, Gentlemen, that will admit of this Answer, and a plain one certainly it is, When a Man comes over and over again to tell the World such a story and give such an account of himself, it must a little grate upon him though it be his duty to tell the truth, and though as Mr. *Williams* says, He is the best Martyr that is a Martyr for Truth; even so say I on the other side, he is the best penitent that is a penitent for Truth, and he is the best Witness that is a Witness for truths sake, and he gives the best testimony of his repentance that by his testimony declares the truth though it be harsh and uneasie to him; For if I have any ingenuity, and have lived in good credit in the World, it must be a drudgery and irksom thing to call my self

a Tray-

a Traytor so often in a Court of Justice. It is true, he might have given it a more moderate Term, and yet withal upon these circumstances he might have reason to call it in some sense a Drudgery. But now, Gentlemen, As he did swear it before he had his pardon from time to time upon all occasions when he was called as a Witness. So now the Pardon is come, which they would have to be the reason of the continuance of his Drudgery he swears the same thing. He has his pardon under the King's Seal, and though it might be thought they would keep him within the compass of his Tether till he had done his Evidence; now he has got that he desired he swears the same thing. And now his pardon does not at all influence his testimony, he is not under any fear, but is as free as any Subject the King has, and now he is upon his Oath, he gives you the account you have had, and he did say all the same things before such time as Col. Sidney, my L. Russel were tried that he says now.

Then, Gentlemen, you have in the next place Witnesses called, several of them to give you an Account of the Conversation and disposition of Mr. Hambden; for says Mr. Williams, for a man to be guilty of a Crime of this nature there must be some kind of evil disposition to it, and so Mr. Williams would argue and make this inference. You see he is not a man of a turbulent, seditious and factious Spirit and temper, he is a studious person, very retired, that has been beyond Sea much, and came not home till such a time. And if there were interlocutions between my Lord Howard and my Lord Shaftsbury it was before he came into England, and so he was not concerned in them. He says, That March last he was to go again, he had a mind to return again to France for his health, and what reason have we to imagine he should concern himself in the Plot? When he was so studious a Man, lived so retired a life, and intended to go abroad so suddenly. And for this you have my Lord Paget, Mr. Pelham, Sir Henry Hobart, Dr. Lupee, Monsieur Justel, and one Murray.

Mr. Williams. Murray, my Lord, we did not examine.

Lord Chief Justice. 'Tis true, I beg your pardon. Well then, these others tell you, They have been persons very intimately conversant with him, they never knew he concerned himself with any thing about Government, but was of a quiet peaceable demeanor, and was so far from that which the Indictment talks of Turbulency and Sedition, that they never had any discourse with him about any such thing at all, save what Dr. Lupee says, who it seems lived with him about two years, and kept him Company in his Studies, and that once having some discourse about the Popish Plot; He said he would venture his Life and any thing he had to preserve the King and Government against that Plot; he did very well, and if he had since declared, he would have ventured his life to have secured the King and Government, against this Plot, I should have been glad to find him of that mind, I pray God you may find him to be so. But from the Evidence even of that French man, it seems there was some Jealousie in the World, and that he lay under hard Censures as well as other people. For speaking of the Plot the Advice given him was this. My Lord Grey is gone and the Duke of Monmouth is gone, why won't you go? Why should that advice be given, if there were no suspicion of his being concerned. That he said *I will not go*, and so they would make his staying here to be an instance and proof of his innocence; Why Gentlemen, If that should be so, then there was the same innocency in my Lord Russel, and Col. Sidney, and all of them: for all the Council of Six every one of them stay'd, except the Duke of Monmouth and he indeed did abscond. And the same Evi-

dence that made the Duke of *Monmouth* fly, and my Lord *Essex* cut his own throat convicted my Lord *Russel* and Col. *Sidney*, and is now brought against the Defendant, and has from time to time been given against the rest. We know no reason that they had to stay more than *West* or *Romsey* had to stay and be taken, and yet that is not used by them as an argument of their innocency.

These are the Evidences that have been given on the Defendants part; and I tell you as I go along what Answers are given to it on the part of the King. As to what is spoken of his intention to go again into *France*, if he designed to go, why did he not go before all this mischief broke out? He came here at *Michaelmas*, and I may say he came it may be at an unlucky time, when the City and its Neighbourhood was in a Distemper, and some Men were blown with fears and jealousies. These might animate him, and inspirit him as they did other people, and put them into a ferment; but you find him attending in Town constantly here till the matter was discovered, whatsoever his intentions were, 'tis much he did not put them into Action, 'tis strange he did not go all this while, it had been much for his advantage That he had never come out of *France*, or that he had returned thither much sooner.

Against all this that has been urged for the Defendant about my Lord *Howard*, I will tell you, what is the Answer to it; and truly first I say, I am apt to believe my Lord *Howard* did tell these Gentlemen what they here testify; but was it ever thought That any Man that was guilty of High Treason would presently proclaim his own guilt? Is it reasonable to imagine, my Lord *Howard* would tell Dr. *Burnet* I am in a Plot, and Col. *Sidney* is in a Plot, and Mr. *Hambden* is in a Plot, and make it his Common talk; nay, it is so far from being an Argument of his Innocency, That more naturally it may be turned upon them as an Argument of his Guilt. For if a Man had not been concerned in the business at all, but were an honest Man, and free from suspicion, what need I talk or concern my self to proclaim my own innocency not being accused? Why must I tell Col. *Sidney's* Footman, This Man, the other Man, That I know nothing of the Plot, and neither I nor any other Man I am sure is concerned in it? But that shews there was a dread and apprehension upon him of something that he was conscious of, and that lying within must have some vent, and this Over-Caution is an intimation that there was something more than ordinary in the matter. We take notice of it as a great Evidence against a Man that is accused for an High-way Man, if he comes to such an Ale-house or Inn, and bids the People take notice I am here at such a time of the day, and that is a circumstance of time that will serve to answer a proof, it may be that may be brought against him of a Robbery done such a time; but we always look upon that industry of theirs as a piece of Artifice designed to patch up a testimony to evade a proof. So that the Argument will turn the other way; and 'tis more for the advantage of these worthy Gentlemen, that it should be turned the other way, for otherwise they would be thought to be Persons ill-affected to the Government; that is Dr. *Burnet*, my Lord *Page*, my Lord *Clare*, and the rest. And if they have a mind to be thought otherwise, they must let the Argument run that way as I say, and in Charity we ought to believe the best of all mankind till we find otherwise by them. We say then in Charity, We suppose He thought it not fit to intrust you with his Confessions; for you are all Loyal Men, I know 'tis the best Answer that can be given, and that which they ought to value themselves upon for their own credit and reputation, and not to make it an Argument against

gainst my Lord Howard, or against the credibility of his testimony in the matter.

I don't know truly, Gentlemen, That I have omitted any one thing that is material, on the one side or on the other, of which there hath been any proof, but I must onely repeat to you this, Here is a matter of great concern and Consequence, a matter wherein the peace of the Government and the Kingdom is concerned in a very high degree, a matter, that if there were another Witness as positive against the Defendant as my Lord Howard, would amount to no less than High Treason. But as there is but one Witness backed with these Circumstances to corroborate his testimony, 'tis but onely a Trespass, but I tell you it treads very nigh upon High Treason, and the tendency of it was to bring us all into Confusion; and what would be the consequence of that but to lay us open to the same mischiefs that we were under in the times of the late Rebellion. For though Men pretend never so fair, and veil it under the names of the *Security of the Government and the Protestant Religion*, yet they would have done well to have tarried till they had a legal Authority to call them to consult of these High matters that they pretend to secure; that had been well. What had these Gentlemen to do to take upon themselves this Power without Authority?

Gentlemen, You have heard the Evidence, and you see what it is. And I must say, in the late Evidences you have had concerning another business of this nature, I wish that might be said to preserve and support the Credit of some Persons upon whose testimonies Lives have been taken away as has been said, and is evident for the advantage of my Lord Howard. I do not find that he has been guilty of Perjury, as being concerned in taking Oaths one way and then giving Evidence another. I mean, first taking Oaths of Secrecie and then revealing; not but that notwithstanding all this, They may be believed, and God forbid but they should be believed according to truth. But I say, if Objections of this nature are to prevail we must never expect any great Crime to be punished, because we must stay till Persons that are strangers to the guilt of the Fact come to give Evidence of it, which is impossible to be done.

Therefore, Gentlemen, I must resolve it all into one Head; You have the Case of a Gentleman of Quality on the one side, and the peace and preservation of the Government on the other side. You hear what is proved against him, the Evidence given on his behalf, the Objections that have been made by the Counsel, which all of them as near as I can remember I have repeated to you, and I ask your pardon and theirs if I have omitted any thing, and I desire to be minded of it. You hear the Answers that have been given. And because the Counsel were unwilling to give the Court trouble or themselves to make long Speeches and Observations, Therefore I have been necessitated to do it as well I can.

Upon the whole matter, My Lord Howard has thus positively sworn the matter of Fact charged in the Indictment against the Defendant; he has been supported by the Witnesses that confirm the circumstances of Smith's going into Scotland, the Scotch Men's being here in June, and the Sham and Cant of Carolina. All which you have heard, and I make no question observed, and is not contradicted by any thing I hear that carries any probability of an Answer. Therefore, Gentlemen, I leave it to you, whether upon this Evidence you will take it upon your Consciences and Oaths, That my Lord Howard is Guilty of wilful and corrupt Perjury, Then you must find the Defendant not Guilty; But if you think he has proved the matter fully, and his testimony is supported by those four Witnesses, At-

terbury, Sir Andrew Foster, Sheriff, and Bale, Then Gentlemen, you must find the Defendant Guilty.

Juriman. My Lord, We desire to ask one Question. At the meeting at Mr. *Hambden's* House, I think my Lord *Howard* says they went to Dinner.

Mr. Just. Holloway. No, it was at Coll. *Sidney's* they went to Dinner.

L. C. J. I know not whether you have taken notice of it, but I have, it was at Coll. *Sidney's* they dined, not at Mr. *Hambden's*.

Then the Jury withdrew from the Bar, and within half an Hour the Jury returned, and being called over answered to their Names, and gave in their Verdict thus:

Cl. of Crown. Are you all agreed of your Verdict?

Omnes. Yes.

Cl. of Cr. Who shall say for you?

Omnes. Foreman.

Cl. of Cr. How say you? Is the Defendant guilty of the Trespass and Misdemeanor whereof he is impeached, or not guilty?

Foreman. Guilty. Which Verdict being recorded, the Court rose.

Martis 12. Februarii, An. 1683. B. R.

L. C. J. Mr. *Attorney*, Have you any thing to move?

Mr. At. Gen. I pray your Judgment against Mr. *Hambden*, my Lord, who was convicted the other day of a great Misdemeanor.

L. C. J. Let Mr. *Hambden* come into the Court then. (which he did.)

Mr. At. Gen. My Lord, I need not aggravate the hainousness of the Offence; for it appears both by the Information, and upon the Evidence to be beyond all Aggravation, wherefore I shall onely pray your Judgment for the King, That you would please to set a good Fine upon him, and that he find Sureties for his good behaviour during his Life.

Mr. Williams. May it please your Lordship, I am of Counsel for Mr. *Hambden*.

L. C. J. Are the Rules out in this Cause?

Mr. Williams. Yes, my Lord, they are out.

L. C. J. Well then, what say you for Mr. *Hambden*?

Mr. Williams. Mr. *Hambden* does attend here according to the Condition of his Recognizance, and since Mr. *Attorney* hath prayed your Judgment, I shall not stir any thing as to the Indictment or the Verdict, but all I have to say for him is this, Mr. *Hambden* is but Heir apparent, his Father is alive; and so though he has the prospect of a good Estate, yet he has but little at present in possession; Your Lordship knows what *Magna Charta* says, That there should be a *Salvo Contentemento* in all Fines, and how far that may be an ingredient into your Lordships Judgment, I leave to your Consideration.

L. C. J. For that matter I cannot tell what his Estate is, I have no knowledge of him, nor of his Estate whether it be great or small, but Mr. *Williams* knows very well, That the Crime in Conscience as well as Law in case it had been proved by two Witnesses, would not only have wrought a forfeiture of all his Estate, but a forfeiture of his Life too, and all his reputation, would have bastardized his Children, would have attainted and corrupted his blood. So that there is no sort of imagination but that the Crime was High enough of Conscience; and certainly deserves, if we can impose it adequate to its desert a very great punishment. Mr. *Hambden*, nor his Counsel can deny but that they had a fair and a full hearing, They had

had the liberty to say and prove all that they could, and you cannot but say Mr. Attorney was very fair in making several Concessions that he might very lawfully and rightly insisted upon. So that there can be no Exception of that kind. I am sorry That Mr. Hambden a Gentleman of good Quality as he is by Birth, though he be a Person I never saw before he came here the last day of the last Term upon his *Habeas Corpus* that I know of. I say, I am sorry one of his Quality and Education, a studious Person as it seems by his own natural inclination, and a learned Man should be so unhappily engaged in a design of this horridly evil nature. But on the one side as well as we must take care of the Subject, so on the other we must take care of the Government. Here was a design of destroying the King, and subverting the Government and bringing all into confusion. Of this Design the Defendant is convicted, and we must take care to proportion the punishment, and according to our Consciences and Oaths, and as we ought to have regard to the Offender, so also we are to have regard to the Government that he has offended.

Mr. J. Wythens. Mr. Williams, It was Amercements that were spoken of there in *Magna Charta*.

L.C. J. Ay, It was never meant of Fines for great Offences.

Then the Judges consulted together.

Mr. J. Wythens. Mr. Hambden, You know you are convicted of a very great Offence as great an Offence as can be I think committed, unless it were High Treason. For the matter of it would have made you Guilty, if there had been two Witnesses. It was for conspiring to levy War against His Majesty, and for conspiring to raise an Insurrection and Rebellion within the Kingdom, a Conspiracy of which some other Persons being lawfully convicted, they have suffered death for it. You are a Person of an extraordinary good Family, and I am sorry one of your Family that has flourished so long and through so many Generations in great honour and reputation, and great prosperity under the Monarchy of *England*, should come to conspire to deprive that King of his Government, whose Ancestors have protected and defended your Family, and to spoil that Monarchy that has been the fountain of so much prosperity and honour to it. I am sorry it comes to my turn to pronounce the Sentence of the Court upon you, Mr. Hambden. I have not any personal knowledg of you, but I have heard of you, and heard heretofore very well of you. You have had a good Education and the Report of a learned and ingenuous Person, which makes me yet wonder the more that you should engage in such a horrid Design as this was. Indeed Mr. Hambden, I am satisfied no Fine can be too great, if any can be great enough for such an Offence. We cannot take cognizance what your Estate is, 'tis reported there is a great Estate in your Family, it has been always represented to be so.

Mr. Hambden. I have nothing but for life, and that is but little neither.

Mr. J. Wythens. I know not what it is truly, Sir. But it was always reported to me to be a very great Estate, but whatsoever it is, we are to look after the proportioning the Punishment as near as we can to the Offence. My Lord, and the Court have considered of the matter, and they think fit to give this Judgment upon you.

They set the Fine of Forty Thousand Pounds upon you to be paid to the King, and you must be committed till you pay it.

J. C. J. And that you find Sureties for your good behaviour during your Life.

Mr. Attorney General. I pray he may be committed for his Fine.

J. C. J. Let it be so. **Mr. Hampden.** If you will apply your self to the King, you may; and there perhaps you may find mercy; we must according to the duty of our Plates and Oaths give such Judgment as the Law requires.

Mr. Justice Withins. Ay, In God's Name. You are in the King's hands, and he may do what he pleases in it.

J. C. J. As a Crime of this nature should have a little punishment, it might encourage Offenders; and if we were to judge according to some Verdicts that have been given here for less Offences, where Gentlemen have given very much greater damages than this Fine amounts to, this would be thought a moderate Fine. I am sorry any Man should bring himself into these Circumstances: The King as he is the Fountain of Justice, so he is also of Mercy; and you and all the rest of his Subjects have cause to bless God that you live under a Monarch that is very merciful. No doubt, if you give a good account of your Contrition and sorrow for your great Offence, and directly apply your self to the King, he will think of shewing mercy to you; but Justice is our Work that are Judges; and according to the methods of Justice we think we cannot inflict less than we have done.

Mr. Williams. My Lord, I pray his Bail may be discharged.

J. C. J. As his Bail is discharged, by being committed.

Mr. Williams. And for the High Treason he is discharged by the High Court.

Mr. Attorney General. I pray he may be committed for his Fine.

J. C. J. Yet, he is so, for there is no Prosecution.

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